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INTERSTATE COMMERCE COMMISSION REPORTS

VOLUME XXXVII

DECISIONS OF THE

**U.S.
= INTERSTATE COMMERCE COMMISSION
A OF THE UNITED STATES**

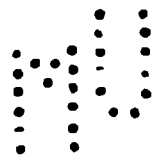
DECEMBER, 1915, TO JANUARY, 1916

REPORTED BY THE COMMISSION



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INTERSTATE COMMERCE COMMISSION.

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INTERSTATE COMMERCE COMMISSION REPORTS.

WESTERN PASSENGER FARES.

INVESTIGATION AND SUSPENSION DOCKET No. 600.

INCREASES IN PASSENGER FARES IN WESTERN TERRITORY.

Submitted October 7, 1915. Decided December 7, 1915.

Reasonableness and propriety of proposed increased passenger fares considered and upon the whole record, *Held:*

1. In the states of Illinois; Wisconsin; Michigan, upper peninsula; Minnesota; Iowa; Nebraska; Missouri, north of the Missouri River; and in Kansas on and north of the main line of the Union Pacific Railroad from Kansas City to the Colorado state line, proposed increased fares not justified, but a basis for interstate fares of 2.4 cents per mile is justified.
2. In the state of Missouri south of the Missouri River, and in the state of Kansas south of the main line of the Union Pacific Railroad, proposed increased fares not justified, but a basis for interstate fares of 2.6 cents per mile is justified.
3. Proposed increased fares from points in territory in which these fares are authorized to points on the main lines of these respondent carriers in California, Utah, Nevada, Colorado, Wyoming, Arizona, New Mexico, Arkansas, Oklahoma, and Texas are not justified in those instances where such proposed increases result in higher fares than would be obtained by using for the construction of such fares the bases herein authorized in the states of Michigan, Illinois, Wisconsin, Kansas, Minnesota, Iowa, Nebraska, and Missouri, and a basis of 2½ cents per mile in the states of North and South Dakota, and a basis of 3 cents per mile in the states south and west thereof.
4. Proposed increased charges for mileage tickets in territory north of the Missouri River in Missouri and on and north of the main line of the Union Pacific Railroad in Kansas to 2½ cents per mile, and in territory south of the Missouri River in Missouri and the main line of the Union Pacific Railroad in Kansas to 2½ cents per mile are justified.
5. Proposed increased fares from points in Michigan, upper peninsula; Illinois; Iowa; Minnesota; Wisconsin; Nebraska; Missouri; and Kansas, to points in states east thereof, which result from the construction of such fares by the use of the bases herein found reasonable and the use of the lawfully published and filed fares in eastern territory are justified.

C. C. Wright, S. T. Bledsoe, O. W. Dynes, R. B. Scott, C. S. Burg, H. G. Herbel, E. T. Miller, A. H. Lossow, A. R. Marshall, W. F. Dickinson, W. T. Hughes, H. A. Scandrett, T. J. Norton, Charles Donnelly, and E. C. Lindley for respondents.

P. W. Dougherty for South Dakota Railroad Commission.

F. A. Jones for Arizona Corporation Commission and the State Corporation Commission of New Mexico.

A. E. Helm and *Joseph L. Bristow* for Public Utilities Commission of the State of Kansas.

C. E. Elmquist and *H. B. Warren* for the Railroad and Warehouse Commission of Minnesota.

H. L. Dowd for United Commercial Travelers of America.

D. K. Clink for International Federation of Commercial Organizations.

P. W. Dougherty, *W. M. Barrow*, *H. T. Clarke, jr.*, *A. J. Edgerton*, *C. E. Elmquist*, *A. E. Helm*, *J. H. Henderson*, *G. A. Henshaw*, *F. A. Jones*, *Willis E. Reed*, *W. H. Stutsman*, *Oliver E. Sweet*, *Clifford Thorne*, and *H. G. Taylor* for the state railroad and public service commissions of Minnesota, Nebraska, Kansas, South Dakota, North Dakota, Oklahoma, Louisiana, Iowa, Arizona, Arkansas, Colorado, Idaho, Montana, Nevada, New Mexico, and Traffic Bureau of Utah.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This investigation involves interstate passenger fares within the territory described as follows: Illinois, on and west of the Chicago & Alton Railroad; Wisconsin; upper peninsula of Michigan; Minnesota; Iowa; Nebraska; Kansas; and Missouri; and from points within said territory to points in other states. The intrastate fares within these states are nearly all upon a basis of 2 cents per mile, due to the requirements of the various legislatures or state commissions, and the interstate fares are at present largely made upon the same basis. Tariffs were filed with the Commission effective on or about March 1, 1915, which had the effect of increasing the basis for the construction of interstate fares from 2 cents to 2½ cents per mile within the territory described in the states of Illinois, Michigan, Wisconsin, Minnesota, Iowa, Nebraska, Missouri north of the Missouri River, and Kansas on and north of the Union Pacific Railroad main line from Kansas City to the Colorado state line. These tariffs also increased the basis for the construction of interstate fares in Missouri south of the Missouri River and in Kansas south of the Union Pacific Railroad main line from 2 cents to 3 cents per mile. Increases were also made in fares from points in the territory described to points in the states east, west, and south thereof. The charge for mileage tickets north of the Missouri River and on and north of the main line of the Union Pacific Railroad in Kansas was increased from 2 cents to 2½ cents per mile, and south of the Missouri River in Missouri and of the Union Pacific Railroad in Kansas was increased from 2 cents to 2½ cents per mile.

Upon protests filed by the commissions of some of the western states the tariffs containing the proposed increased fares were suspended until June 29, 1915, and subsequently resuspended until December 29, 1915. Hearings have been held, briefs filed, and arguments heard, and the case now stands for disposition.

This case may be considered as in large part complementary to Investigation and Suspension Docket No. 555, known as the *1915 Western Rate Advance Case*, 35 I. C. C., 497, hereinafter referred to as the freight case. The evidence relative to the financial condition of the carriers presented in connection with the freight case, so far as applicable, was stipulated into the instant case.

To the 41 roads concerning which testimony was developed by the carriers in the freight case there were added six other roads whose interest in the present case was deemed sufficient by the carriers to warrant their inclusion here, and one road, the Chicago, Indiana & Southern, has been eliminated, for the reason, as stated by the carriers, that interstate passenger fares on this line have been recently increased. The six roads added are the Great Northern; Northern Pacific; Union Pacific; Toledo, Peoria & Western; Duluth, South Shore & Atlantic; and the Texas Midland.

Some of the railroads included in the 46 roads or systems lie largely or wholly without the territory in which the specific increases in basing fares are sought and are but slightly, if at all, affected thereby. Such are the Colorado & Southern; Fort Worth & Denver City; Wichita Valley; Colorado Midland; Denver & Rio Grande; Fort Smith & Western; International & Great Northern; Louisiana & Arkansas; Missouri & North Arkansas; Missouri, Oklahoma & Gulf; New Orleans, Texas & Mexico and subsidiary lines; San Antonio & Aransas Pass; San Antonio, Uvalde & Gulf; Sunset Central lines; Trinity & Brazos Valley; Texas & Pacific; Opelousas, Gulf & Northeastern; Texas Mexican; Texas Midland; and the Vicksburg, Shreveport & Pacific.

It is impossible to select a representative group of roads lying wholly within the territory principally affected by these proposed increases. The roads named in group 1¹ perhaps as fairly as any group that can be selected are representative of the territory in which it is sought to increase the fares from 2 cents to 2½ cents per mile. It should be noted, however, that the Great Northern; Northern Pacific; Chicago, Milwaukee & St. Paul; Rock Island; Union Pacific; Missouri

¹ Chicago & Alton; Chicago & North Western; Chicago, St. Paul, Minneapolis & Omaha; Chicago, Burlington & Quincy; Quincy, Omaha & Kansas City; Chicago Great Western; Chicago, Milwaukee & St. Paul; Chicago, Rock Island & Pacific; Chicago, Rock Island & Gulf; Duluth, South Shore & Atlantic; Great Northern; Illinois Central; Minneapolis & St. Louis; Iowa Central; Minneapolis, St. Paul & Sault Ste. Marie; Wisconsin Central; Missouri Pacific; Northern Pacific; St. Joseph & Grand Island; Toledo, Peoria & Western; Union Pacific, including the Oregon-Washington Railroad & Navigation Company and the Oregon Short Line; Wabash.

Pacific; Illinois Central; and the Wabash have a large mileage outside the territory affected. In the outside territory a higher basis of interstate fares applies.

The total revenue from passenger service on all the roads in group 1 for the fiscal year 1914 was \$228,132,823.71. The total passenger revenue of 40 of the roads for the same year in the states affected by the proposed increases was as follows:

Michigan (upper peninsula).....	\$1, 743, 829. 75
Iowa.....	21, 558, 584. 63
Kansas.....	16, 984, 992. 39
Minnesota.....	18, 391, 887. 30
Missouri.....	17, 180, 919. 38
Nebraska.....	12, 946, 120. 45
Wisconsin.....	17, 486, 107. 08
Illinois.....	29, 304, 091. 42
Total for eight states.....	135, 596, 532. 40

Inasmuch as approximately one-half the state of Illinois lies outside the territory directly affected, the total passenger revenue within the territory of all of the carriers in question is estimated not to exceed \$120,000,000. As this territory includes a number of other railroads not shown in group 1 it seems probable that the railroads shown in group 1 earned not more than half their total passenger revenue within the territory immediately affected by these increases. The roads shown, however, are believed to be more nearly representative of the territory directly affected than any other group that has been presented for consideration. Statistical data with reference to the roads in this group will be found in the appendix to this report.

The analysis of the testimony in regard to the financial condition of the group of 41 roads considered in the freight case and shown on pages 502 to 566 of the Commission's report in that case will not be repeated here. References, however, will be made to certain tables shown in the former case and modifications in such tables resulting from their use in connection with the 46 roads and the roads in group 1 here considered, instead of the 41 roads involved in the freight case.

OPERATING RATIO.

The table on page 507 of the report in the freight case shows an increase in the operating ratio, including taxes and rentals, on the 41 roads from 68.14 in 1901 to 78.81 in 1914. The evidence in this case shows also with regard to the 46 roads an increase in the operating ratio from 65.94 in 1901 to 76.22 in 1914, and with regard to the roads in group 1 an increase in the operating ratio from 65.87 in 1901 to 75.33 in 1914. The accompanying table shows the operating ratios for each year.

TABLE No. 1.—Operating ratios¹ by groups of roads, 1901–1914.

Year	Operating ratios. ¹		
	41 roads.	46 roads.	Group 1.
	Per cent.	Per cent.	Per cent.
1901.....	68.14	65.94	65.87
1902.....	68.74	65.66	64.22
1903.....	70.06	66.98	64.90
1904.....	72.19	68.78	67.41
1905.....	71.98	68.33	66.58
1906.....	70.80	67.25	65.96
1907.....	70.98	68.40	68.09
1908.....	75.69	72.73	70.93
1909.....	74.07	70.40	69.11
1910.....	75.81	72.83	72.06
1911.....	76.72	73.98	73.60
1912.....	78.96	75.79	75.39
1913.....	76.77	74.19	73.48
1914.....	78.81	76.22	75.33

¹ Ratio to operating revenue of total of operating expenses, taxes, and net balance of outside operations, hire of equipment, joint facility rents, miscellaneous rents, and rents for lease of road.

REVENUE PER TON-MILE AND PER PASSENGER-MILE.

Table 2 on page 510 of the report in the freight case shows a decrease in the revenue per ton-mile on the 41 roads from 8.64 mills in 1901 to 8.27 mills in 1914, and a decrease in the revenue per passenger-mile from 2.16 cents in 1901 to 2.05 cents in 1914. The established formula for computing the rate per passenger per mile is to divide passenger revenue by the number of revenue passengers carried 1 mile. The computation is confined to revenue passengers and does not include free passengers, mail, express, baggage, or any service other than revenue passengers and the fares they pay. The evidence in this case as to the 46 roads reveals a decrease per ton-mile from 8.83 mills in 1901 to 8.42 mills in 1914, and a decrease in the revenue per passenger-mile from 2.18 cents in 1901 to 2.09 cents in 1914. Similarly, for the roads in group 1 the revenue per ton-mile decreased from 8.43 mills in 1901 to 7.85 mills in 1914, and the revenue per passenger-mile decreased from 2.15 to 2.03 cents during the same period, as shown by the subjoined table.

TABLE No. 2.—Comparisons of revenue per ton-mile and per passenger-mile.

Year.	41 roads. Revenue per—		46 roads. Revenue per—		Group 1. Revenue per—	
	Ton-mile.	Passenger-mile.	Ton-mile.	Passenger-mile.	Ton-mile.	Passenger-mile.
	Mills.	Cents.	Mills.	Cents.	Mills.	Cents.
1901.....	8.64	2.16	8.83	2.18	8.43	2.15
1902.....	8.61	2.13	8.74	2.16	8.38	2.12
1903.....	8.53	2.13	8.63	2.15	8.30	2.12
1904.....	8.77	2.14	8.87	2.16	8.43	2.14
1905.....	8.62	2.03	8.55	2.07	8.09	2.03
1906.....	8.27	2.08	8.33	2.11	7.95	2.09
1907.....	8.50	2.15	8.57	2.13	8.04	2.07
1908.....	8.47	1.97	8.51	2.02	8.08	1.97
1909.....	8.55	1.96	8.72	2.00	8.19	1.95
1910.....	8.49	1.99	8.67	2.03	8.19	1.97
1911.....	8.65	2.04	8.80	2.08	8.25	2.00
1912.....	8.49	2.07	8.61	2.12	8.01	2.05
1913.....	8.36	2.11	8.38	2.16	7.79	2.08
1914.....	8.27	2.05	8.42	2.09	7.85	2.03

PORTION OF REVENUE PAID IN SALARIES AND WAGES.

Table 4 on page 513 of the report in the freight case shows that on the 41 roads, out of each dollar of revenue collected in 1901, 38.2 cents was paid on this account and 44.4 cents out of each dollar collected in 1914. On the 46 roads here considered labor received 37.77 cents out of each dollar of revenue collected in 1901 and 42.98 cents in 1914. On the roads in group 1 out of each dollar collected in 1901, 38.28 cents was paid on this account and 43.33 cents in 1914. The following table shows comparisons for the period 1901-1914, inclusive:

TABLE NO. 3.—Labor compensation compared with total operating revenues.

Year.	Ratio of labor compensation to total operating revenues.		
	41 roads.	46 roads.	Group 1.
	Per cent.	Per cent.	Per cent.
1901.....	38.2	37.77	38.28
1902.....	39.0	37.81	37.30
1903.....	41.3	39.85	39.52
1904.....	41.7	40.04	39.62
1905.....	40.8	38.75	37.26
1906.....	40.5	38.39	38.98
1907.....	40.7	39.54	39.49
1908.....	43.5	41.66	40.97
1909.....	41.6	39.77	39.88
1910.....	42.9	41.39	41.47
1911.....	43.1	41.79	41.77
1912.....	43.0	43.37	42.57
1913.....	44.2	42.68	42.89
1914.....	44.4	42.98	43.33

PORTION OF REVENUE PAID FOR TAXES.

Table 5 on page 513 of the freight case shows that for 41 roads out of each dollar of revenue collected there were paid out for taxes 3.2 cents in 1901 and 4.6 cents in 1914. Similarly, on the 46 roads here considered out of each dollar of revenue received there were paid out for taxes 3.17 cents in 1901 and 4.97 cents in 1914. On the roads shown in group 1 out of each dollar of revenue collected there were paid out for taxes 3.44 cents in 1901 and 5.20 in 1914. Comparisons for the period are shown below.

TABLE NO. 4.—Taxes compared with operating revenues.

Year.	Ratio of taxes to operating revenue.		
	41 roads.	46 roads.	Group 1.
	Per cent.	Per cent.	Per cent.
1901.....	3.2	3.17	3.44
1902.....	3.1	3.07	3.33
1903.....	3.0	3.08	3.34
1904.....	3.1	3.09	3.36
1905.....	3.2	3.16	3.44
1906.....	3.1	3.17	3.46
1907.....	3.1	3.11	3.46
1908.....	3.6	3.62	3.75
1909.....	3.6	3.70	3.90
1910.....	3.7	3.98	4.18
1911.....	3.7	3.94	4.22
1912.....	4.1	4.42	4.71
1913.....	3.9	4.23	4.42
1914.....	4.6	4.97	5.20

RATIO OF MAINTENANCE EXPENSES TO OPERATING REVENUES.

Table 6 on page 514 of the freight case respecting maintenance expenses on the 41 roads shows the ratios of maintenance of way and structures and maintenance of equipment expenses to total operating revenue and the ratio of all other operating expenses to total operating revenue with respect to the 41 roads there considered. The following table reproduces in part the figures shown in Table 6 with respect to the 41 roads, and shows also corresponding figures for the 46 roads here considered and the roads embraced in group 1:

TABLE No. 5.—*Ratio of maintenance expenses and other operating expenses to total operating revenues, 1901-1914.*

¹ Other operating expenses include operating expenses proper and the net balances of outside operations, hire of equipment, joint facility rents, and miscellaneous rents.

RATIO OF MAINTENANCE EXPENSES TO COST OF ROAD AND EQUIPMENT.

Table 7 on page 516 of the report in the freight case shows in the third column the percentage relationship of maintenance of road and equipment expenses to cost of road and equipment for the eight selected roads therein named. The following table repeats these percentages with respect to the eight selected roads¹ and shows the corresponding percentages with respect to the 46 roads and the roads named in group 1:

TABLE No. 6.—*Per cent maintenance of road and equipment expenses combined are of cost of road and equipment.*

Year.	8 selected roads. ¹	46 roads.	Group 1.	Year.	8 selected roads. ¹	46 roads.	Group 1.
	Per cent.	Per cent.	Per cent.		Per cent.	Per cent.	Per cent.
1901.....	4.36	3.64	3.94	1906.....	5.92	5.03	5.24
1902.....	4.53	3.93	4.19	1907.....	5.87	4.90	5.08
1903.....	4.91	4.12	4.32	1908.....	5.67	5.31	5.48
1904.....	4.66	4.09	4.24	1909.....	5.05	5.01	5.16
1905.....	5.11	4.34	4.57	1910.....	5.87	4.96	5.06
1906.....	5.09	4.78	5.14	1911.....	5.01	5.47	5.68
1907.....	5.31	5.17	5.47	1912.....	5.59	5.31	5.40
				1913.....			
				1914.....			

¹ The eight selected roads are the Atchison, Topeka & Santa Fe; Chicago, Burlington & Quincy; Chicago, Milwaukee & St. Paul; Chicago & North Western; Chicago, St. Paul, Minneapolis & Omaha; Chicago, Rock Island & Pacific; Missouri, Kansas & Texas; and St. Louis Southwestern.

**COMPARISON OF INCREASE IN NET COST OF ROAD AND EQUIPMENT
WITH INCREASE IN OPERATING INCOME.**

Table 11, on page 521 of the report in the freight case, shows that on the 41 roads the increase in net operating income was 1.2 per cent of the increased investment for the six years from 1907 to 1913. Similarly, for the 46 roads the percentage increase of income to increase of investment was 1.22, while on the roads in group 1 it was 1.27. This comparison is more fully set forth in the accompanying table:

TABLE NO. 7.—Comparison of increase in net cost of road and equipment with increase in net operating income,¹ for a six-year period.

Items compared.	41 roads.	46 roads.	Group 1.
Cost of road and equipment.	<i>Billions.</i>	<i>Billions.</i>	<i>Billions.</i>
1913.....	\$4.91	\$4.22	\$4.04
1907.....	3.84	4.84	3.08
Six years' increase.....	1.07	1.38	.96
Net operating income less all rentals:			
Average for—	<i>Millions.</i>	<i>Millions.</i>	<i>Millions.</i>
1913 and 1914.....	\$205.5	\$289.0	\$248.6
1907 and 1908.....	193.2	272.2	181.4
Six years' increase.....	12.3	16.8	12.2
Per cent increase in income is of increase in investment..	1.2	1.22	1.27

¹ Net operating income as here used is the net credit of operating revenue, operating expenses, taxes, outside operations, hire of equipment, joint facility rents, miscellaneous rents, and rents for lease of road.

NET COST OF ROAD AND EQUIPMENT AND OPERATING INCOME.

Table 12, on page 523 in the freight case, showing the net cost of road and equipment for the years 1901 to 1914, together with net operating income for the 41 roads, is here reproduced and similar figures are shown for the 46 roads and the roads embraced in group 1:

TABLE NO. 8.—Net cost of road and equipment and net operating income,¹ 1901-1914.

¹ Net operating income as here used is the net credit of operating revenue, operating expenses, taxes, outside operations, hire of equipment, joint facility rents, miscellaneous rents, and rents for lease of road.

INCREASED WAGES AND SALARIES.

The average daily compensation of all classes of employees, including general officers, on the 46 roads was \$2.01 in 1901. In 1914 this average was \$2.52, while on the roads in group 1 the average daily compensation increased from \$1.97 in 1901 to \$2.52 in 1914. The increase during this period is more fully set forth in the following table:

TABLE NO. 9.—*Increase in average daily compensation of all employees.*

Year.	41 roads.	46 roads.	Group 1.
1901.....	\$2.00	\$2.01	\$1.97
1902.....	2.00	2.01	1.98
1903.....	2.05	2.06	2.04
1904.....	2.11	2.12	2.12
1905.....	2.14	2.15	2.14
1906.....	2.16	2.16	2.16
1907.....	2.24	2.24	2.24
1908.....	2.28	2.30	2.29
1909.....	2.24	2.26	2.25
1910.....	2.33	2.34	2.33
1911.....	2.41	2.42	2.41
1912.....	2.44	2.45	2.44
1913.....	2.49	2.50	2.51
1914.....	2.51	2.52	2.52

The labor costs per train-mile on the 46 roads have risen from 66.14 cents in 1901 to 103.98 cents in 1914, and on the roads in group 1 from 65.41 cents in 1901 to 104.11 cents in 1914. The labor costs per car-mile have risen on the 46 roads from 4.05 cents in 1901 to 5.48 cents in 1914, and on the roads in group 1 from 4.01 cents in 1901 to 5.32 cents in 1914. A tabulated comparison for the period follows:

TABLE NO. 10.—*Total labor cost per train-mile¹ and per car-mile.¹*

¹ The costs shown are based on the combined revenue freight and passenger train-miles and car-miles, respectively.

² Data not available.

Using as a measure the equated traffic unit, as defined on pages 509 and 510 of the report in the freight case, the labor costs on the 46 roads were 3.44 mills per equated traffic unit in 1901 and 3.73 mills in 1914. On the roads in group 1 the labor costs were 3.36 mills per equated traffic unit in 1901 and 3.56 mills in 1914. Expressed, therefore, in terms of the equated traffic unit, it would seemingly appear that the labor costs on the 46 roads per equated traffic unit have increased 8½ per cent since 1901, and on the roads in group 1 have increased 6 per cent. A comparison covering 1901 to 1914 is given in the subjoined table:

TABLE NO. 11.—*Total labor costs, all employees, per equated traffic unit.*¹

Year.	41 roads.	46 roads.	Group 1.
	Mills.	Mills.	Mills.
1901.....	3.42	3.44	3.36
1902.....	3.46	3.30	3.24
1903.....	3.64	3.55	3.33
1904.....	3.78	3.65	3.47
1905.....	3.57	3.40	3.12
1906.....	3.47	3.30	2.67
1907.....	3.58	3.40	2.30
1908.....	3.72	3.50	2.30
1909.....	3.57	3.45	2.23
1910.....	3.68	3.61	2.45
1911.....	3.78	3.72	2.58
1912.....	3.94	3.85	2.66
1913.....	3.83	3.72	2.54
1914.....	3.78	3.73	2.56

¹ The "equated traffic unit" as here used is obtained by adding to the ton-miles three times the passenger-miles, thus reducing all traffic to approximately a ton-mile basis. See page 510 of the report in the freight case.

Labor costs as here employed cover not only labor involved in operation but also some labor employed in constructing additions and betterments.

The actual increase which has taken place in the total cost of the service per ton-mile and per passenger-mile since 1901 can not be deduced from the exhibits furnished or from the answers to the interrogatories. The testimony, however, does show that, reckoned in terms of the equated traffic unit, the cost of the service has increased since 1901 on the 46 roads from 6 mills in 1901 to 6.62 mills in 1914, while on the roads in group 1 the increase per equated traffic unit is from 5.795 mills in 1901 to 6.198 mills in 1914. This indicates that on the 46 roads the cost per unit of service has increased approximately 10 per cent and on the roads in group 1 has increased approximately 7 per cent.

Table 15 on page 526 of the report in the freight case shows that on the 41 roads, for each dollar of revenue received the labor compensation had increased from 38.25 cents in 1901 to 44.38 cents in 1914, while the amount available for interest, dividends, and surplus had diminished from 31.86 cents in 1901 to 21.19 in 1914. Similarly for the 46 roads, out of each dollar of revenue collected, labor received

37.77 cents in 1901 and 42.98 cents in 1914, while the amount available for interest, dividends, and surplus decreased from 34.06 cents in 1901 to 23.78 cents in 1914. In the case of the roads in group 1, out of each dollar of revenue collected, labor received 38.28 cents in 1901 and 43.33 cents in 1914, while the amount available for interest, dividends, and surplus diminished from 34.13 cents in 1901 to 24.67 in 1914.

It is unnecessary to amplify further the review of the financial situation of the individual carriers herein involved, or of the 46 roads as a whole, or the various groups embraced therein. The evidence of both carriers and protestants and our examination of the records of these companies filed with the Commission show—

1. An increase in the ratio of operating expenses to operating revenue between 1901 and 1914.

2. An increased cost for labor (*a*) as measured by compensation paid to labor per day in the various classes of service; (*b*) as measured by the amount paid for labor out of each dollar of revenue received; (*c*) as measured by the amount paid for labor performed expressed in train-miles, car-miles, or in equated traffic units not appreciably offset by the small decrease indicated per ton-mile or per passenger-mile in particular items.

3. A rising scale of taxes as measured by (*a*) the total amount paid; (*b*) the amount paid per dollar of investment; (*c*) the amount paid per mile of road; (*d*) the amount paid per dollar of revenue received.

4. A diminished compensation for service as measured by the average return per ton-mile or the average return per passenger-mile on these roads in 1914 as against the average return received in 1901.

All these influences have been reflected in the diminished rate of return per dollar of investment in the railroad property of the railroads here affected. These railroads, like other industries and in common with their employees, have felt the rising cost of living, to a certain extent due to an increased price of some of the articles necessarily required in the conduct of their business, but to a large extent due also to the increased wage paid to their employees and to increased taxes. While the tendencies shown may properly be considered by the Commission, many of these roads are prosperous while others have not met their operating expenses and fixed charges, and are now in the hands of receivers. The roads now being operated by receivers and interested in the proposed increased fares include the Wabash, Missouri Pacific, the Rock Island lines, St. Louis & San Francisco, St. Louis, Iron Mountain & Southern, and Missouri, Kansas & Texas. The mileage of these roads now being operated by receivers lies largely outside of the territory immediately affected by the proposed increase in fares and in territory in which higher fares apply.

SEPARATION OF OPERATING EXPENSES BETWEEN FREIGHT AND PASSENGER.

Much testimony has been presented in this case and in the freight case relative to the respective returns upon the investment which the carriers are now deriving from the passenger service as compared with the freight service. Throughout the proceeding passenger service has been treated, both by the carriers and by the protestants, as including the services performed in connection with the transportation of baggage, mail, express, and certain other services allied to or connected with the transportation of passengers, for the reason, as explained in evidence, that the expenses of conducting these several services could not readily be separated from the expense of performing the passenger service proper. It would be preferable to have the results of the operation of each division of the passenger service shown separately, but we are compelled to consider the record as presented.

In order to reach a conclusion as to the propriety of the increases in passenger fares here sought it becomes important to determine whether the passenger service under the existing scale of rates and fares is more profitable or less profitable than the freight service. The proper answer to this question can be had only by separating the revenues derived from and expenses incurred in each branch of the service. There is no particular difficulty in separating the revenue received from the passenger service from that derived from the freight service. The separation of maintenance of equipment, transportation, and traffic expenses presents no insurmountable difficulties. The separation of the expenses incident to the maintenance of way and structures, however, is more difficult. These latter expenses in the main can not be directly allocated to the respective services. They are common expenses necessary to and influenced by the necessities of both services, but not wholly controlled by either.

The weight and length of the freight trains necessitate a certain degree of compactness of roadbed, weight of rail, strength and stability of bridges, culverts, and other structures. The weight and speed of the passenger trains have also necessitated in the interest of safety a higher degree of excellence as indicated in the strengthening of track structures, and a certain higher degree of upkeep of the track and structures, while both alike have induced the installation of block signal devices. The maintenance of way and structures expenses are so large and form so great a proportion of the total expenses of railroads that their apportionment between passenger and freight becomes a question of great moment in the determination of the relative profitableness of the passenger and freight business. To the determination of this question a large part of the testimony of both car-

riers and protestants has been directed in this case. The question of the separation of operating expenses between freight and passenger service has also been the subject of study by the Commission. We published on June 15, 1915, effective July 1, 1915, our rules governing the separation of operating expenses between freight service and passenger service on large steam railroads. In an introductory note to these rules the Commission said:

The advisability of requiring steam railroad companies to report their passenger expenses separately from their freight expenses was passed upon by the Commission in a report issued as of June 13, 1914, 30 I. C. C., 676, after a public hearing on Statistical Series Circular No. 3. That circular suggested that maintenance of way expenses be left undivided. In view of the advantages, presented at the hearing, of having a complete separation, the division of statistics was directed to prepare a new circular outlining a complete separation. This was done in Statistical Series Circular No. 4. This circular was the subject of a discussion before the Commission on May 21, 1915. Representatives of railroads and of various state railroad commissions participated.

There was apparent acceptance generally of the necessity for such a division of expenses, and no serious difference of opinion developed as to the methods proposed except with reference to expenses for maintenance of way and structures used in common by freight and passenger services. The representatives of state commissions advocated the use of "gross ton-miles" as a basis while the representatives of railways favored "engine ton-miles." The discussion seemed to be somewhat influenced by the possible effect of these respective bases on statistical evidence which might be introduced in passenger fare cases. It may fairly be said that the facts and arguments presented do not warrant the final approval by the Commission of either the gross ton-mile or the locomotive ton-mile at this time. The method suggested in Circular No. 4 will be made effective, with minor revisions, and the disputed portion of the expenses will be required to be reported as undivided. Carriers will be required to compile locomotive ton-mile data, and the relative merits of locomotive ton-miles, direct charges, estimated gross ton-miles, or modifications thereof can be further considered with the aid of statistics thus made available. In accordance with the following order, the separation will become effective on July 1, 1915, and will apply to all carriers having operating revenues in excess of \$1,000,000 a year.

One of the interrogatories sent by the Commission to the various carriers affected by the proposed increases inquired as to the methods ordinarily used by each carrier in the separation of passenger and freight expenses, the amounts directly allocated to each service, the amounts regarded as common, the method believed by each carrier to be the most nearly equitable for the assignment of these common expenses, the basis for such assignment of each account and the data used in making the apportionment. The carriers were invited to make this apportionment for the years 1913 and 1914. Replies were received from 32 carriers making the apportionment for 1914, and 28 of these carriers also made the apportionment for 1913.

We shall discuss first the method proposed by the carriers for the apportionment of these expenses. We reproduce pages 67 and 68 of Exhibit No. 1 filed by L. E. Wettling, who was a witness for the carriers in this case as well as in the freight case.

TABLE NO. 12.—*Separation of operating expenses between freight and passenger (Wetting Exhibit No. 1, 46 roads).*

Transportation expenses.....	402,200,867.88	272,226,372.77	122,878,486.11	.....	.....
General expenses.....	30,374,767.60	18,109,344.13	12,265,823.45	.....	.....
Total operating expenses.....	800,176,711.01	588,964,631.87	261,222,079.14	67.35	32.65
Basis VI:					
Maintenance of way and structures.	160,900,366.37	93,209,194.23	67,691,172.16	57.93	42.07
Maintenance of equipment.....	120,774,215.51	124,646,941.80	46,227,373.71	.....	.....
Traffic expenses.....	26,926,503.65	13,664,702.76	12,241,800.89	.....	.....
Transportation expenses.....	402,200,867.88	272,226,372.77	122,878,486.11	.....	.....
General expenses.....	30,374,767.60	18,097,199.92	12,277,567.68	.....	.....
Total operating expenses.....	800,176,711.01	537,871,998.86	262,304,714.15	67.23	32.78

count No. 89; the sum of the assignments of the foregoing expenses to freight and passenger, respectively, are resolved into percentages of the total of such accounts, and upon these percentages the entire maintenance of way and structures expenses are divided between freight and passenger.

V. Same as basis II, except includes a proper proportionment of switch or yard engine ton-miles.

VI. Average of the combination of all the foregoing bases.

In bases II, III, IV, V, and VI all expenses other than maintenance of way and structures expenses remain practically the same as in basis I.

TABLE No. 13.—Operating results and ratio of net operating income to cost of road and equipment, shown separately for freight and passenger services
(Wetling Exhibit No. 1, 46 roads).

Items.	Total.	Freight.	Per cent of total.	Passenger.	Per cent of total.	Ratio of expense to revenue.			Ratio of net operating income to cost of road and equipment.		
						Total.	Freight.	Passenger.	Total.	Freight.	Passenger.
						Per cent.	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.
Operating revenue.....	91, 147, 698, 448. 08	8810, 960, 132. 26	70. 06	8336, 738, 315. 82	29. 34						
Base I:											
Operating expenses.....	800, 176, 711. 01	535, 300, 674. 60	66. 90	264, 876, 086. 41	33. 10						
Hire of equipment, joint facilities, etc.....	10, 636, 056. 84										
Rentals, net (lease of road).....	6, 924, 397. 26	49, 909, 814. 17		24, 693, 794. 46							
Taxes.....	57, 043, 154. 53										
Total operating expenses.....	874, 780, 319. 64	585, 210, 498. 77		289, 569, 830. 87		76. 22	72. 16	85. 99			
Net operating income.....	272, 918, 128. 44	225, 749, 643. 49		47, 168, 444. 95					4. 24	5. 24	2. 21
Net cost of road and equipment.....	6, 433, 968, 625. 00	4, 304, 326, 010. 13	66. 90	2, 129, 643, 614. 87	33. 10						
Base II:											
Operating expenses.....	800, 176, 711. 01	533, 045, 011. 78	66. 62	267, 131, 699. 23	33. 38						
Other expenses and taxes.....	74, 603, 608. 63	49, 700, 924. 07		24, 912, 684. 56							
Total operating expenses.....	874, 780, 319. 64	582, 745, 935. 85		292, 034, 383. 79		76. 22	71. 86	86. 72			
Net operating income.....	272, 918, 128. 44	228, 214, 196. 41		44, 703, 932. 03					4. 24	5. 32	2. 08
Net cost of road and equipment.....	6, 433, 968, 625. 00	4, 286, 302, 997. 98	66. 62	2, 147, 658, 727. 02	33. 38						
Base III:											
Operating expenses.....	800, 176, 711. 01	535, 847, 173. 75	66. 97	264, 329, 535. 26	33. 03						
Other expenses and taxes.....	74, 603, 608. 63	49, 962, 036. 70		24, 641, 571. 93							
Total operating expenses.....	874, 780, 319. 64	585, 809, 212. 45		288, 971, 107. 19		76. 22	72. 24	85. 81			
Net operating income.....	272, 918, 128. 44	226, 150, 919. 81		47, 767, 208. 63					4. 24	5. 23	2. 26
Net cost of road and equipment.....	6, 433, 968, 625. 00	4, 308, 528, 788. 16	66. 97	2, 126, 139, 886. 84	33. 03						

Basis IV:									
Operating expenses.....	800,176,711.01	846,212,490.29	68.26	203,904,220.72	31.74
Other expenses and taxes.....	74,603,603.63	50,924,423.26	28,670,183.38
Total operating expenses.....	874,780,319.64	897,136,913.54	277,643,408.10	76.22	73.63	82.45
Basis V:									
Operating income.....	272,918,128.44	213,823,218.72	59,094,909.72	2.89
Net cost of road and equipment.....	6,433,968,625.00	4,391,826,983.42	68.26	2,042,141,641.58	31.74	4.24	4.87
Basis VI:									
Operating expenses.....	800,176,711.01	538,964,631.87	67.35	261,222,079.14	32.65
Other expenses and taxes.....	74,603,603.63	50,245,530.41	24,358,078.22
Total operating expenses.....	874,780,319.64	589,200,162.28	285,580,157.36	76.22	72.65	84.81
Operating income.....	272,918,128.44	221,759,969.98	51,158,158.46
Net cost of road and equipment.....	6,433,968,625.00	4,333,277,868.94	67.35	2,100,690,756.06	32.65	4.24	5.12
Basis VII:									
Operating expenses.....	800,176,711.01	537,871,996.86	67.22	262,304,714.15	32.78
Other expenses and taxes.....	74,603,603.63	50,148,545.72	24,455,062.91
Total operating expenses.....	874,780,319.64	588,020,542.58	286,759,777.06	76.22	72.51	85.16
Operating income.....	272,918,128.44	222,939,589.68	49,978,538.76
Net cost of road and equipment.....	6,433,968,625.00	4,324,913,709.73	67.22	2,109,054,915.27	32.78	4.24	5.15
Basis VIII:									
Operating expenses.....	800,176,711.01	537,871,996.86	67.22	262,304,714.15	32.78
Other expenses and taxes.....	74,603,603.63	50,148,545.72	24,455,062.91
Total operating expenses.....	874,780,319.64	588,020,542.58	286,759,777.06	76.22	72.51	85.16
Operating income.....	272,918,128.44	222,939,589.68	49,978,538.76
Net cost of road and equipment.....	6,433,968,625.00	4,324,913,709.73	67.22	2,109,054,915.27	32.78	4.24	5.15

EXPLANATORY NOTE.—After obtaining a division of operating expenses between freight and passenger by applying the several bases as described in the preceding table, No. 12, the remaining items of income, as also the cost of road and equipment, were divided between freight and passenger on the basis of the ratio of the freight expenses and the passenger expenses, respectively to the total operating expenses.

These tables show in a general way the methods used for the division of maintenance of way expenses according to the different bases employed and applied to the revenues and expenses of the 46 roads. The first basis shown is that ordinarily used by these carriers in the division of these expense accounts for their own purposes. Not all these carriers furnished these divisions of expenses and the divisions shown in this exhibit for the 46 roads were arrived at by applying to the operating expenses of the nonreporting roads the average ratio obtained on all the roads furnishing the divisions. The result, of course, is an average derived from the use of a variety of methods.

Basis 2 rests upon the claim that the greater speed of the passenger trains creates a greater degree of wear upon the track and other structures than would be the case were the passenger trains run at the same speed as freight trains. Inasmuch as this greater speed of passenger trains necessitates more power than would be required were the speed less, it is asserted that the weights of the passenger locomotives bear some direct relation to both the weight and the speed of the trains they draw. The locomotive ton-mile therefore to a certain extent measures the work done by the engines in each class of service, and to a certain extent forms a measure of the wear on track and structures. There is, however, a large proportion of the expenses incident to the maintenance of way and structures that is influenced only to a small extent and certain expenses are not influenced at all by the weight and speed of the trains that pass over the track. The action of the elements and deterioration of materials will go on whether trains pass over the tracks or not. The effect of these natural agencies varies greatly with the location, the materials used in track structure, and with the season. It is uncertain how much of any particular item of expense is due to action of the elements and how much to wear. For example, no one can tell just how much of the expense incurred in the replacement of ties that are unfit for further use is due to the action of the elements and how much to the wear caused by the movement of trains. Various assumptions are indulged, as that 60, 70, or 80 per cent of such expenses are due to action of the elements and the remainder to wear. These assumptions appear to us to rest on uncertain ground. There is no doubt but that, other things being equal, the high velocity of passenger trains, as compared with freight trains, necessitates a better maintenance standard on that account.

The testimony of a number of operating and accounting officials of long experience supports the locomotive ton-mile method as in their judgment the most logical and practical method for the division of these expenses. The results of apportionments upon this basis compare closely with the results obtained by the use of basis No. 3, shown on the same exhibit. This basis proposed the division of the maintenance of way and structures expenses between passenger

and freight in the proportion which the revenue passenger train-miles bear to the revenue freight train-miles. This basis may be said to rest, in the main, upon the assumption that these expenses should be divided between passenger and freight upon the use that is made of the track and structures by these two main branches of the service. It does not directly take account of the fact that passenger trains move faster than freight trains, nor does it take account of the fact that freight trains are heavier and longer than passenger trains.

Basis No. 4 is an attempt to separate these expenses between passenger and freight upon the proportion existing between the direct train costs as represented by repairs to locomotives, fuel, water, lubricants, and supplies for trains and the wages of enginemen and trainmen.

Basis No. 5 is the same as the engine ton-mile basis except that it includes a proper proportion of switch or yard engine ton-miles, while basis No. 6 is the average of the five foregoing bases.

But little testimony was directed to support basis 4. Bases 2, 3, and 5 were criticized by protestants upon the ground that the results thereby reached vary so widely from the division of the expenses which are directly allocated. It may be said that practically all of the maintenance of equipment, transportation, traffic, and general expenses are either directly allocated or no material difference of opinion appears to exist concerning their proper division. These expenses assignable to the passenger service are approximately 30 per cent of the total expense included in these three divisions, while upon the revenue train-mile or the locomotive ton-mile method the amount of expenses of maintenance for ways and structures assignable to the passenger service is usually more than 40 per cent of the total of these expenses. It is asserted that these unallocated expenses of maintenance of way and structures should be divided between passenger and freight upon some basis which more nearly accords with the known ratio that exists between the other expenses.

While these methods of dividing the maintenance of way and structures expenses should not be rejected because the results thereby derived are not in accord with the results obtained from the separation of other expenses of the roads, the fact that they are so far out of proportion to the results of the division of other readily allocated expenses may well cause hesitation about their acceptance. We are not prepared to approve in its entirety any of the methods offered by the carriers.

The protestants through their witnesses, Hillman and Warren, have made a division of the operating expenses for the years 1913 and 1914 on the lines of the following carriers: Chicago & North Western; Chicago, Milwaukee & St. Paul; Chicago, Rock Island & Pacific; Missouri, Kansas & Texas; Atchison, Topeka & Santa Fe; Chicago Great Western; and Chicago, Burlington & Quincy. Six different bases are presented for the division of the common ex-

penses in the maintenance of way and structures group, and the results arrived at by the use of each method are shown.

Without entering into all the details of the methods used in reaching the various results shown, it may be said that the first method has the effect of assigning the expense of maintenance of way and structures to passenger and freight, respectively, upon the basis of the product of the total weight of passenger trains multiplied by the distance moved as compared with the product of the total weight of freight trains times the distance moved. This method assumes the proper relation between these expenses to be due solely to the weight and distance moved. In other words, the total tons moved 1 mile in a passenger train is compared with the total tons moved 1 mile in a freight train.

The second method is the locomotive ton-mile method as used by the carriers and heretofore explained.

The third method is called the locomotive tractive power method. This consists in using the tractive power in tons of each locomotive in exactly the same way as is the weight of locomotives in the locomotive ton-mile method. That is to say, the sum of the products of the respective tractive powers in tons of the locomotives used in the passenger service multiplied by the number of miles moved is compared with the result obtained by a like computation for the freight service to determine the ratio upon which the common expenses in the maintenance of way and structures group are divided. Inasmuch as the tractive powers of locomotives are nearly proportional to their weights, the results derived by this method in most instances are not materially different from those derived by the locomotive ton-mile method.

The fourth method is called the car-mile method, and, as its name implies, divides these common expenses between passenger and freight upon the ratio that exists between the total passenger car-miles and the total freight car-miles involved in performing these respective services through the year.

The fifth method proceeds to make certain assumptions that of some of these expenses one part constituting an assumed proportion of the total expenses is due to action of the elements and the balance is due to wear. The expense due to wear is distributed upon a gross ton-mile basis and expense due to weather is distributed on a car-mile basis.

The sixth method entertains the same presumptions as to the amount due to wear and weather of the various items and proceeds to distribute the wear on a gross ton-mile basis as in the fifth method, but the expense due to weather is distributed upon a net ton-mile basis.

Below are shown in Tables Nos. 14 and 15 the results of the application of these six methods to the maintenance of way and structures expenses on the Chicago & North Western Railway for the years 1913 and 1914. The total amount of these maintenance of way and structures expenses for 1913 was \$11,501,186.43.

TABLE No. 14.—*Protestants' assignment of maintenance of way and structures expenses to passenger service, C. & N. W. Railway, 1913.*

Method of assignment.	Portion of main- tenance of way and structures expenses charged to passenger service.	Per cent.
Gross weight basis.....	\$3,299,072.00	28.68
Locomotive ton-mile basis.....	4,666,768.35	40.58
Locomotive tractive power basis.....	4,719,703.74	41.04
Car-mile basis.....	2,475,570.38	21.52
Wear on gross ton-mile, weather on car-mile basis.....	2,771,701.79	24.10
Wear on gross ton-mile, weather on net ton-mile basis.....	1,961,269.68	17.06

Out of a total of \$45,158,736.14 for transportation, traffic, and maintenance of equipment expenses for the year 1913 there was assigned to the passenger business on the gross weight basis \$13,258,-742.89, or 29.34 per cent. Approximately the same proportion of the expenses under these three general accounts was assigned to the passenger business under the remaining five methods. There was no material difference of opinion between carriers and protestants regarding the division of expenses in these three groups.

For the year 1914, on the same railway, out of a total of \$12,179,-689.85 of maintenance of way and structures expenses the assignment to passenger business would be as follows:

TABLE No. 15.—*Protestants' assignment of maintenance of way and structures expenses to passenger service, C. & N. W. Railway, 1914.*

Method o assignment.	Portion of main- tenance of way and structures expenses charged to passenger service.	Per cent.
Gross weight basis.....	\$3,573,056.93	29.33
Locomotive ton-mile basis.....	5,118,693.64	42.02
Locomotive tractive power basis.....	5,209,852.75	42.77
Car-mile basis.....	2,698,773.58	22.16
Wear on gross ton-mile, weather on car-mile basis.....	2,996,374.00	24.60
Wear on gross ton-mile, weather on net ton-mile basis.....	2,030,891.55	16.67

For the same year 29.27 per cent of the traffic, transportation, and maintenance of equipment expenses were charged on the gross weight basis to the passenger business. As shown, the results obtained from the use of the six methods applied to the \$12,179,689.85 of common expenses on the North Western for 1914 vary from \$5,209,852.75 to \$2,030,891.55, or a difference in results of more than \$3,000,000.

Methods 5 and 6, for the time being at least, will be eliminated from consideration because they rest upon unverified assumptions concerning the amount of expenses in the various items due to the action of the elements. This record is not convincing as to the accuracy of these various assumptions.

Method No. 4, the car-mile basis, is open to the following objections. It takes no account of speed. In effect, it assumes that the service, so far as track and structures are concerned, of moving a passenger train of six cars 1 mile is equivalent to the movement of a freight train of six cars the same distance. To put the matter in another way, upon a given road the average passenger train may consist of an engine and six cars. The average freight train may consist of an engine and 24 cars. The car-mile method would charge to the average freight train four times as much of the maintenance of way and structures expenses as to the passenger train, although the service performed by track and structures in carrying the passenger train may be as great or nearly as great as that performed in carrying the freight train.

Methods 2 and 3, locomotive ton-mile and locomotive tractive power bases, may be considered as the methods advocated by the carriers and are shown in the protestants' exhibits for comparative purposes only. Method No. 1, the gross weight basis or gross ton-mile basis, is urged by protestants as the method which more nearly than any other accords with their best judgment as to how these common expenses should be divided. This method does not directly take account of speed as indicative of increased wear. It is, however, alleged that indirectly this is included by reason of the better condition of passenger cars and their lesser impairment of way and structures.

Difficult and elusive as is the problem of giving to these elements their proper weights, they are entitled to some consideration. We have, however, some difficulty in accepting the locomotive ton-mile method for the reason that while it does to a certain extent give consideration to the speed of the trains as well as to their weight, we are not convinced that this is in all respects more certain in its foundation than is the gross ton-mile method.

These expenses for maintenance of way and structures which apparently can not be at this time directly allocated as between passenger and freight upon the basis of the costs should be divided between passenger and freight as nearly as possible upon the basis of their respective utilization of this part of the plant. If one could correctly measure and compare the degree of utilization of the track and structures by these two branches of the service this comparison might serve as a basis for the division of these unallocated expenses. What is the best measure that can be obtained of this utilization of the track by these respective services? In the absence of any certainty that the scale of passenger fares and that of freight rates is properly proportioned, the revenue derived from the respective services can not form a fair measure of this utilization. The absence of such a known relation between these charges, however, leads to an examination of certain expenses as probably indicative of the utilization of the track and structures. The fuel consumed by road

locomotives drawing trains over the road; the lubricants, water, and other supplies for these locomotives; the train supplies; the wages of trainmen and enginemen, are all separated between passenger and freight, and each by itself or the aggregate of all will constitute an index of the utilization of the tracks by these two branches of the service. Other accounts such as the repairs to locomotives might also be regarded as indicative of the proper apportionment. This expense, however, is not segregated as between road and yard locomotives. We shall, therefore, for the purpose of obtaining a basis for division, regard only the items shown below as per our classification of operating expenses in effect during the fiscal year ended June 30, 1914.

80. Road enginemen.	85. Other supplies for road locomotives.
82. Fuel for road locomotives.	86. Road trainmen.
83. Water for road locomotives.	87. Train supplies and expenses.
84. Lubricants for road locomotives.	

The common expenses are divided on this method between the two services in the proportion of the actual division of the seven preceding accounts. Our decision to use this method in this case must not be regarded as conclusive on our part of the method that should ultimately be used for the division of maintenance of way and structures expenses between passenger and freight. The objections that may be urged against the direct charge method are known and appreciated. If, for example, a marked increase in wages of enginemen on passenger trains takes place, the result under this method is to increase the amount of unallocated expenses assignable to passenger business, while the actual utilizations of the track and structures by the two branches of the service remains unchanged. We are using these direct train costs in this instance to determine the apportionment of unallocated expenses between passenger and freight because the objections to this method seem less forceful than those that have been urged against any of the other methods proposed.

From the 32 carriers which in answer to our interrogatories supplied information concerning methods of division of expenses between passenger and freight for 1914, we have eliminated those whose lines lie wholly or almost entirely without the territory in which the principal increases are proposed. There are 20 of these railroads or systems that have furnished these divisions and whose lines lie in territory which would be directly affected by the proposed increases. For the purposes of this case the divisions furnished by carriers of all of the operating expenses have been used except those due to maintenance of way and structures. The maintenance of way and structures expenses have been divided between passenger and freight upon the basis of the allocated train expenses named above. A table showing the results of this method for each of the 20 roads involved and a comparison of these results with the results of the division furnished by the carriers for the year 1914 follows.

TABLE No. 16.—*Net cost of road and equipment (book cost less reserve for accrual depreciation), net operating income, ratio of net operating income to property investment for 20 roads as shown by carriers' answers to interrogatories and as modified by dividing the maintenance of way and structures expenses between passenger and freight for the year 1914 on the basis of direct train costs.*

* Italicized figures denote deficit.
 * Total net cost of road and equipment includes approximately \$24,000,000 securities of constituent companies.
 * Divided on basis of carriers' figures as rendered.
 * Maintenance of way and structures expenses divided on basis of freight train and passenger train expenses, accounts 80, 82, 83, 84, 85, 86, 87, and 88.
 * Total net cost of road and equipment includes cost of approximately 11,000,000 acres of land.

While the accounts we have selected may form the best basis for apportioning joint outlay for the upkeep of the track and roadway that is at hand, they do not directly apply to the yards and terminals. The expenses of maintenance of road and structures include the maintenance of yards, and the expenses of maintenance of these yards are not separated from those of the road under the present system of accounts. If the yard maintenance was a known amount, in the absence of a record of the locomotive miles made in switching passenger cars as compared with the miles made in switching freight cars, we would endeavor to assign this yard maintenance as between passenger and freight upon the basis of the direct yard costs included in fuel and other supplies used by the yard locomotives and the wages of the employees performing the yard service. Measured by the expenditure made for freight and passenger service, respectively, in the yards and on the road, the freight service should, no doubt, be charged with a greater proportion of the upkeep of the yards than of the tracks. The use of the seven accounts above named to apportion joint outlay for all tracks will, therefore, produce a result showing a somewhat less net passenger revenue than would be obtained were the yard maintenance expenses assigned to passenger and freight upon the basis of the direct yard cost. It will be of value to ascertain as far as possible the probable limitation of whatever error is likely to result from the use of these direct train costs.

Of the 20 roads named in the preceding table 19, furnished the basis for division of each account. The Minneapolis & St. Louis Railroad did not furnish the full data necessary to show the method of division used in assigning each of the accounts of operating expenses. The returns of the 19 railroads, however, which did furnish this information showed that the seven accounts of direct train costs were usually divided approximately as follows: 38.5 per cent passenger and 61.5 per cent freight, while the direct yard costs of the same character were approximately 11 per cent passenger and 89 per cent freight.

The record does not indicate what proportion of the total maintenance of way and structures expenses are due to the upkeep of yards, but it is easy to determine how the results shown in the above table are affected by dividing these yard maintenance expenses upon the basis of the direct yard costs. Let it be assumed, for example, that 10 per cent of the maintenance of way and structures expenses were incurred in the upkeep of the yards. It follows then that the correct formula representing the per cent of total maintenance of way expenses assignable to the passenger traffic is 0.9 of 38.5 per cent plus 0.1 of 11 per cent, or 35.75 per cent. Since on these roads the maintenance of way and structures expenses constitute almost exactly 20 per cent of the total operating expenses, it is evident that

the proportion of total operating expenses which may have been improperly charged to the passenger traffic is 20 per cent of the difference between 38.5 and 35.75 per cent, or 0.55 per cent. The total operating expenses of these roads for the year 1914 were approximately \$616,000,000. A variation in the assignment of these expenses of 0.55 per cent amounts to \$3,388,000. Under the method used by witness Wettling, which is hereinafter explained, of dividing the property account, this affects the amount of cost of road and equipment assignable to the passenger traffic by \$27,433,000, and affects the percentage of net income from the passenger traffic to cost of property devoted to the passenger traffic by 0.29 in the percentage. It also affects the percentage of income derived from the freight business to assumed property investment by 0.15 in the percentage. From an examination of this table it will be noted that the passenger traffic upon these roads earns 3.39 per cent upon the value of the property assumed to be devoted to the passenger traffic, which, in round numbers, is \$1,465,000,000; while the freight traffic earns 5.07 per cent upon the value of the property assumed to be devoted to the freight traffic, which, in round numbers, is \$3,157,000,000. To allow the passenger traffic to earn the same ratio of return upon investment as the freight traffic the passenger earnings of these roads would have to be increased by \$24,600,000. If, however, these yard maintenance costs are as much as 10 per cent of the total cost of maintenance of way and structures it would then appear that the passenger traffic is earning 3.68 per cent on the cost of the property assumed to be devoted to the passenger traffic, which, in round numbers, would be \$1,438,000,000; while the freight traffic is earning 4.92 per cent on the cost of the property assumed to be devoted to the freight traffic. In order to permit the passenger traffic to earn the same percentage upon the investment as the freight traffic, it would require an increase in net income from the passenger traffic of approximately \$18,000,000.

Thirteen railroads furnished divisions of operating expenses between passenger and freight for the eight years from 1907 to 1914. The roads furnishing these divisions were the Atchison, Topeka & Santa Fe; Chicago & Alton; Chicago, Burlington & Quincy; Denver & Rio Grande; Great Northern; Minneapolis & St. Louis; Missouri Pacific; Northern Pacific; Quincy, Omaha & Kansas City; St. Louis, Iron Mountain & Southern; St. Louis Southwestern; Toledo, Peoria & Western; and the Wabash. Using the totals of passenger service revenue and passenger expenses for these roads, comprising 48,925 miles of line, we are able to deduce the following table with respect

to the ratio between the expenses and revenues of the passenger and freight business for the years 1907 to 1914:

TABLE No. 17.—*Ratios of expenses to revenues, passenger service and freight services, respectively, 1907-1914.*

Year.	Ratio of passenger expenses to passenger service revenue.	Ratio of freight expenses to freight service revenue.	Year	Ratio of passenger expenses to passenger service revenue.	Ratio of freight expenses to freight service revenue.
1907.....	74.70	59.76	1911.....	76.53	64.30
1908.....	73.54	64.70	1912.....	79.14	63.10
1909.....	71.80	61.81	1913.....	79.41	61.87
1910.....	75.08	63.66	1914.....	79.83	62.70

As before stated, the protestants furnished an analysis of the revenues and expenses of seven roads for the years 1913 and 1914. This analysis shows a lower operating ratio from freight than from passenger traffic when the maintenance of way and structures is divided upon a gross weight basis in the case of the Chicago, Rock Island & Pacific for the year 1914; for the Atchison, Topeka & Santa Fe for the year 1913; but in all other cases the passenger service, according to the protestants' scheme of division, showed a lower operating ratio than did the freight service.

BOOK COST OF ROAD AND EQUIPMENT DEVOTED TO PASSENGER SERVICE.

The book cost of that portion of the road and equipment which is devoted to the passenger traffic has been assumed by the carriers to be the same proportion of the entire book cost as the passenger operating expenses for the year 1914 are of the entire operating expenses. The liability of error in accepting the book cost of property as the basis for the computation of return on investment is fully realized. This arbitrary method of assignment of this or that portion of the book cost of the entire property to passenger traffic is also quite unsatisfactory. The carriers have assumed that the expenses chargeable to each of the services for the year 1914 form a measure of the value of the property devoted to such services. If, for example, the passenger operating expenses for the year 1914 were 30 per cent of the total expenses. 30 per cent of the book cost of the property is assigned to the passenger service.

The 20 lines here used have a large percentage of their mileage in territory outside the region principally affected by these increases and passing through territory where higher fares apply. This is notably true of the Atchison, Topeka & Santa Fe, Great Northern, Northern Pacific, Illinois Central, and the Chicago, Milwaukee & St. Paul rail-

roads. In the territory principally affected by these increases the carriers are seeking to increase their fares by approximately 25 per cent. The total gross passenger revenue of the 20 lines we have here taken for the year 1914 was approximately \$205,000,000, while the carriers' estimated maximum increase accruing to these lines from the increases proposed is not quite \$16,000,000, or something less than 8 per cent of their gross passenger revenue. Should these increases be permitted and the increased fares not result in any appreciable diminution in the number of passengers who travel in and through that territory the effect would be to raise the percentage earned upon the net cost of property assumed to be devoted to passenger service by approximately 1 per cent.

DIRECT TRAIN COST.

One of the witnesses for the protestants introduced an exhibit showing the result of a study of the direct cost of operation of passenger business on the North Western for 7 days in April and May, 1915, and a similar study of the direct costs on the Rock Island covering a period of 14 days in March and April, 1915. The direct costs included by this witness embraced only wages of trainmen, wages of enginemen, and fuel for locomotives. The study showed that for the period taken the average direct costs of all trains on the North Western amounted to 4.972 mills per passenger-mile, and on the Rock Island 5.498 mills. In the testimony of protestants regarding the expenses chargeable to passenger business by the gross ton-mile method supported by their witness these direct train costs named include 29.17 per cent of the total expenses for passenger traffic on the North Western for the year 1914. This would indicate that the actual expense of doing passenger service for the period in question was 1.70 cents per passenger-mile on this road. If we were to accept the locomotive ton-mile method of division of operating expenses between passenger and freight the total operating costs of the passenger service on this road were 1.84 cents per mile for the period in question. For the Rock Island this study would indicate that using the gross weight basis of division between passenger and freight advocated by the protestants the actual operating expenses on the Rock Island for this period were 2.03 cents per passenger-mile, and using the locomotive ton-mile method advocated by the carriers these costs were 2.16 cents per passenger-mile.

While the work of this witness had evidently been done with great thoroughness, the periods of time covered were probably too short to give anything more than an approximate index of what these direct train costs are throughout the year on these railroads.

Another rather significant feature of the exhibit was that it shows during the period in question that the direct costs for what were considered by this witness to be local trains per passenger-mile were materially higher than for through trains, particularly on the North Western. Only the items of direct costs were considered and no attempt was made to ascertain the relative profitableness of the different classes of trains.

DIVISION OF EXPENSES BETWEEN INTERSTATE AND INTRASTATE
SERVICE.

It has been urged by protestants in the hearing and on brief and argument that the carriers have failed to justify the reasonableness of the proposed increased fares by reason of the fact that they have made no attempt to segregate the costs of doing the intrastate passenger service from the interstate service. If it is true that the intrastate passenger service in this territory is much more expensive to perform than the interstate service, a showing that the passenger service as a whole is less profitable than the freight service might not inevitably compel the conclusion that interstate passenger business is less profitable than the freight business. The intrastate passenger service in these states is approximately 50 per cent of the total, and if this service is much more expensive than the interstate it would follow that whereas the passenger service as a whole paid from 3.39 to 3.68 per cent upon the cost of road and equipment devoted to passenger service in 1914, the interstate passenger service paid a greater per cent of return. There might be more force in this contention if there were in this record definite and convincing proof that the intrastate passenger service is much more expensive than the interstate, but we have no such proof and none of these protestants is contending that such is the case. The intrastate and interstate passenger service is intermingled. It is largely done upon the same trains over the same roadbed, with the aid of the same employees. There are, it is true, two terminals involved in all state journeys and usually only one in any one state in an interstate journey. But the average haul for the interstate passenger is greater, and the character of the equipment used in the interstate business will average somewhat higher than in the strictly intrastate business.

The task in this case is not the fixing of fares for each kind of passenger traffic. A different and more elaborate investigation would be necessary if an attempt were being made to ascertain the appropriate relation between the various classes of passenger traffic, such as commutation, Pullman, local, and through trains, long hauls and short hauls. The question here is whether an increase in passenger fares has been justified.

FARES IN OTHER TERRITORIES.

In North and South Dakota the general basis for both the interstate and intrastate fares is $2\frac{1}{2}$ cents per mile. These states lie between the present 2-cent territory and states farther west in which a higher basis of fares applies. In Arkansas, Oklahoma, Louisiana, Texas, and Colorado the general basis for interstate fares is 3 cents per mile, but our attention has been directed to a number of departures from the general rule, some of which the carriers are seeking to correct, particularly fares into and through the state of Arkansas. In some of the western states, notably Nevada and Arizona, the general basis for interstate fares is 4 cents per mile. The general basis in California is 3 cents per mile, but fares from St. Louis, Chicago, and other eastern points to California terminals are less than would be arrived at by the construction of fares on the various bases used in the territories traversed.

For example, the fare from Chicago to Omaha is \$10.11. The distance is 491 miles, or 2.06 cents per mile. The fare via Omaha from Chicago to Cheyenne, Wyo., is \$21.80, a distance of 1,004 miles. The distance, Omaha to Cheyenne, is 513 miles, and the additional fare for this additional distance is \$11.69, or 2.28 cents per mile. The fare from Chicago to Ogden is \$36.35. The distance is 1,488 miles. The distance from Cheyenne to Ogden is 484 miles, and the additional fare over that to Cheyenne is \$14.55, or the equivalent of 3 cents per mile. The fare from Chicago to Reno, Nev., is \$58.05. The distance is 2,027 miles. The additional distance beyond Ogden is 539 miles, and the additional fare is \$21.70, or approximately 4 cents per mile. The fare, Chicago to Truckee, Cal., is \$59.50. The distance is 2,062 miles. Truckee is 35 miles west of Reno and the fare is \$1.45 more than to Reno. The fare to San Francisco is \$59.75, or 25 cents more than to Truckee, and the distance, Truckee to San Francisco, is 209 miles. It thus appears that these fares are built up from Chicago westward, using various bases for their construction until a point is reached about 30 miles west of the California state line, where the fare is the same as to San Francisco. The remainder of the stations in California on the main line to San Francisco take the San Francisco fare.

The same method applies via the southwestern lines running through New Mexico and Arizona to the southern California points. Representatives of these western states urged that this results in unreasonable fares to points in these states as compared with the fares to California points. The reason assigned for the relatively high basis for interstate fares to and from points in Nevada and Arizona is the sparsity of population and scarcity of local passenger traffic in these states. As before stated, the suspended tariffs contained increased fares from points in the states of Illinois, Michigan,

Wisconsin, Minnesota, Iowa, Nebraska, Kansas, and Missouri, to some of the points in these western states, but no increases were proposed to points in the state of California. We have no evidence in this record which justifies any increase in fares to these far western states where such increases will result in higher fares than will be obtained by using such bases as may be herein found reasonable within the territory principally affected by these increases and a basis of 3 cents per mile in territory west thereof.

We show below for the year 1914 the number of passenger miles per mile of road in the states particularly affected by the proposed increases and in the states contiguous thereto on the south and west:

TABLE No. 18.—*Passenger-miles per mile of road.*

Illinois.....	230, 269	North Dakota.....	67, 727
Wisconsin.....	134, 273	South Dakota.....	28, 546
Minnesota.....	116, 744	Colorado.....	107, 052
Iowa.....	112, 110	Arkansas.....	94, 200
Nebraska.....	106, 466	Oklahoma.....	80, 617
Kansas.....	96, 229	Texas.....	74, 825
Missouri.....	121, 826		

It should be stated that the above figures do not represent the average traffic density of all the lines operating in the states named, but they do express the traffic density of the lines represented in a group of 40 roads, which is made up by taking Wettling's group of 46 roads and eliminating therefrom the Colorado & Southern; Denver & Rio Grande; Kansas City Southern; Missouri & North Arkansas; Sunset Central lines; and the Wabash, which roads did not furnish the information. It will be observed that the maximum density of traffic in any of these states is in Illinois, and that in Wisconsin, Minnesota, Iowa, Nebraska, Kansas, and Missouri the density of traffic is usually higher than in the states on the south and west.

The population per mile of railroad as shown by exhibits filed on behalf of the carriers in the states affected by these proposed increases, and in some of the states south, west, and east thereof, is as follows:

TABLE No. 19.—*Population per mile of road and basis for intrastate fares.*

State.	Population per mile of road.	Basis for intrastate passenger fares in cents per mile.	State.	Population per mile of road.	Basis for intrastate passenger fares in cents per mile.
Wisconsin.....	316	2	Texas.....	268	3
Minnesota.....	242	2	Illinois.....	491	2
Iowa.....	234	2	Indiana.....	370	2
Nebraska.....	208	2	Ohio.....	545	2
Kansas.....	190	2	Pennsylvania.....	704	2 1/2
Missouri.....	411	2	New York.....	1, 141	2 to 2 1/2
North Dakota.....	181	2 1/2	Kentucky.....	622	3
South Dakota.....	152	2 1/2	Tennessee.....	861	3
Colorado.....	154	3 to 5	Virginia.....	664	2 1/2
Oklahoma.....	206	2	Alabama.....	415	2 1/2
Arkansas.....	311	2	Mississippi.....	410	3

One of the witnesses for the carriers submitted a compilation respecting the average population per square mile and per mile of road, average passenger-train revenue, average number of passengers carried 1 mile per mile of road, and other information respecting four groups of states, which are characterized as New England,¹ trunk line,² central,³ and western.⁴ For the groups selected the statistics are as follows:

TABLE No. 20.—*General statistics.*

	New England territory.	Trunk line territory.	Central territory.	Western territory.
1. Average population per square mile.....	105.7	136.7	88.8	24.9
2. Average population per mile of road.....	827.0	750.0	444.0	244.0
3. Average passenger train revenue per mile of road....	\$8,913	\$7,678	\$4,110	\$2,861
4. Average number of passengers carried 1 mile per mile of road.....	431,387	357,770	160,743	121,038
5. Average distance in miles each passenger was carried.	19.48	25.48	30.66	44.30
6. Average receipts per passenger per mile.....	\$0.01777	\$0.01756	\$0.01617	\$0.01912
7. Average receipts per passenger train-mile.....	\$1.71160	\$1.46420	\$1.23070	\$1.33903

For the purpose of showing the difference in conditions of operation of the lines north of the Union Pacific Railroad and north of the Missouri River as compared with those south of this line, four railroads in each territory, each operating a large mileage, have been selected by a witness for the carriers and a comparison made of the respective revenues per mile of road on these lines for the year 1914.

TABLE No. 21.—*Comparison of operating conditions on northern lines and southern lines, 1914.*

	Miles operated	Passenger train revenue per mile of road.	Total revenue passenger-miles per mile of road.
.....	8,070	\$2,862.26	145,286
by.....	9,139	2,002.65	126,086
total.....	9,062	2,490.43	94,213
.....	3,613	3,065.12	145,822
.....	3,918	1,612.80	66,196
.....	3,334	2,300.87	105,636
.....	4,746	2,722.87	108,614
Southern.....	3,364	2,209.93	86,897

Upon the whole record the carriers have sustained their contention that the business done by passenger train service is less profitable on the whole than is the freight service in this territory. A suggestion has been made that the mail service and express service may

¹ The New England states are Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

² The trunk line states are Delaware, Maryland, New York, New Jersey, Pennsylvania, Virginia, and West Virginia.

³ The central states are Illinois, Indiana, lower peninsula of Michigan, and Ohio.

⁴ The western states are Arkansas, Iowa, Kansas, upper peninsula of Michigan, Minnesota, Missouri, Oklahoma, Nebraska, North Dakota, South Dakota, and Wisconsin.

not be carrying their full proportion of the total expenses of operation of these properties. No evidence was offered, however, to show that this is a fact.

POSSIBLE ECONOMIES TO RENDER PASSENGER SERVICE PROFITABLE.

Some statements appear in the record with regard to the alleged operation of a greater number of passenger trains between competitive points than the necessities of the public require. Each road, however, as at present constructed, serves an intermediate region of importance. The service between two cities is planned not solely with reference to the traffic between those cities, but with reference to the territory between and beyond such cities. Each railroad system, too, is a unit, and has its own interests and those of its patrons and its stockholders to serve. The public has a right to demand of the railroads that transportation shall be safe; that reasonably expedited service shall be furnished; that the number of trains operated shall be commensurate with the volume of traffic moving; that the trains and stations shall be clean, sanitary, and comfortable. For such services and facilities the carriers should be allowed under reasonable fares to earn a reasonable return upon the property used in that service. Neither competition nor the unreasonable demands of the public, however, must be made the excuse for waste and extravagance in the passenger service.

The testimony respecting group 1 roads shows that in 1901 the average freight train on these roads carried 247.49 tons, while in 1914 the average freight train carried 414.91 tons, an increase in the tonnage per train of 67.65 per cent. In 1901 the average passenger train on the same roads carried 40.23 passengers. In 1914 the average passenger train carried 55.59 passengers, an increase in the number of passengers carried per train of 38 per cent. The average freight train of these carriers contained 24.3 cars in 1901 and 32.8 cars in 1914, an increase in cars per train of 35 per cent. The average passenger train contained 5.3 cars in 1901 and 6 cars in 1914, an increase in cars per train of but 13 per cent. This shows that while the improvement of the track and use of the larger and heavier locomotives and other equipment have enabled the freight service to handle longer and heavier trains, with certain resulting economies, the conditions under which the passenger service is performed have apparently not permitted the same lengthening of trains and increase in passengers carried per train.

Table No. 33 in the appendix shows that from 1901 to 1914 on the roads in group 1 the average load per freight car increased from 10.19 to 12.63 tons, or 23.94 per cent, while the average number of passengers per car-mile increased from 7.58 to 9.21, or 21.50 per cent.

This table further shows that from 1901 to 1910 the percentage of increase in the number of passengers per car-mile exceeded the percentage of increase in the average load of freight per car. Since 1910, however, the freight car loading has continued to increase, while the number of passengers per car has declined. In 1910 the average number of passengers per car was 10.35, and for 1914 the average was 9.21, or exactly the same as for 1905. The averages in this table as to passengers are for all passenger train cars. A compilation from the annual reports to the Commission of the 46 roads and systems heretofore referred to shows that for the year ended June 30, 1908, the average number of passengers per car-mile of cars carrying passengers was 14.77, and for the year ended June 30, 1914, this average was 14.12. Basic figures for obtaining this average were not required of carriers prior to 1908.

One of the interrogatories submitted to the carriers prior to the hearing read as follows:

What were the purchase prices paid by respondent for passenger equipment in 1914 as compared with the prices in 1907, considering, as to locomotives, their weight and tractive power, and as to passenger cars, their weight and seating capacity? If possible, give this information for intervening years also.

From the replies made by the respondent carriers, those submitted by the Atchison, Topeka & Santa Fe system; Chicago & North Western; Chicago, St. Paul, Minneapolis & Omaha; Missouri, Kansas & Texas; Northern Pacific; and the Rock Island lines were selected as being representative, and for the further reason that these carriers furnished data for intervening years, thus affording a more comprehensive period for study.

The first-class passenger cars purchased by the Santa Fe system in 1907 weighed 119,500 pounds and cost \$12,118 each, or 10.14 cents per pound. In 1914 this type of car weighed 140,000 pounds and cost \$16,685 each, or 11.92 cents per pound. This is typical of the increase in weight and cost of passenger train cars generally on the western roads as a whole.

There appears to have been some increase since 1907 in the seating capacity of first-class passenger cars purchased by representative carriers, as illustrated in the following table compiled from the carriers' responses to one of the Commission's interrogatories:

TABLE No. 22.—Seating capacity of first-class passenger cars purchased since 1907.

Road.	Seating capacity.	
	1907	1914
Atchison, Topeka & Santa Fe system	74	78
Chicago & North Western Railway	62	68
Chicago, St. Paul, Minneapolis & Omaha Railway	62	66
Illinois Central Railroad	64	88
Rock Island lines	86	86
St. Louis & San Francisco Railroad	65	72
Union Pacific system	70	72

¹ Average of all first-class cars purchased.

A table is here introduced which is indicative of the increase in weight and cost per seat:

TABLE NO. 23.—*Cost and weight of first-class passenger cars.*

¹ 1911.

² 1913.

³ 1909.

It is also shown that in 1907 it cost the Santa Fe system 43.09 cents per pound of tractive power in the consolidation type of locomotive, while in 1913 the cost was 47.56 cents per pound. The Pacific type cost 62.57 cents per pound in 1909 and 87.54 cents in 1914. Other types show an increase over the preceding years with a general upward tendency in the cost per pound of tractive power for these representative roads.

INCREASED COST AND QUALITY OF EQUIPMENT.

Testimony and exhibits offered by the carriers show that in 1906, 42 of the 46 roads or systems had in service 11,959 passenger train cars. In 1914 the number had increased to 16,958, or an increase of 41.8 per cent.

The average weight of these cars increased during this period from 71,307 pounds in 1906 to 85,291 pounds in 1914, or 19.61 per cent.

During this period the average cost increased from \$5,739.90 in 1906 to \$7,409.27 in 1914, or 29.08 per cent.

The average weight of first-class passenger cars increased during this period from 78,271 pounds in 1906 to 91,068 pounds in 1914, or 16.35 per cent.

In 1906 there were 11,899 wooden cars, 60 steel underframe cars, and no all-steel cars in service. In 1914 there were 13,030 wooden cars, 1,636 steel underframe cars, and 2,292 all-steel cars in service.

In 1906 there were 139¹ passenger train cars owned or leased per thousand miles of line and in 1914, 166² of such cars.

During this period the first-class passenger cars per thousand miles of line increased from 42³ in 1906 to 52⁴ in 1914, but the

¹ Expressed decimally, 139.349.

² Expressed decimally, 166.550.

³ Expressed decimally, 42.079.

⁴ Expressed decimally, 52.902.

number of second-class passenger cars per thousand miles of line decreased from 24¹ in 1906 to 20² in 1914.

During this period the number of dining cars increased from 338 in 1906 to 612 in 1914, or from 3³ dining cars per thousand miles of line in 1906 to 5⁴ in 1914. The cost of dining cars in service increased from \$3,939,555.93 in 1906 to \$8,366,350.04 in 1914.

The number of parlor cars owned by railroads increased from 169 in 1906 to 248 in 1914, or from 1.6⁵ to 2.0⁶ per thousand miles of line.

Other exhibits filed by the carriers show the original cost of passenger train cars by classes of cars in service on June 30, 1906 and 1914, respectively, and the passenger revenue accruing to these carriers for each of the years 1901 to 1914, inclusive. It appears from these exhibits that for the year 1906 the revenue derived by carriers from the transportation of passengers amounted to 247 per cent of the original cost of the passenger train cars in service for that year, while in 1914 the per cent of passenger revenue to total cost of passenger train cars was 199 per cent. Excluding the cost of baggage, express, postal, and other cars not used for carrying passengers, it appears that the passenger revenue for 1906 amounted to 332 per cent of the cost of the cars used for carrying passengers, and that for the year 1914 this percentage was 294.

From the foregoing it will be observed that since 1907 there has been a substantial increase in the weight, in the seating capacity, and in the cost of passenger cars, but no corresponding increase has taken place in the number of passengers per car-mile, and, although there has been a large increase in total passenger revenue, the ratio of passenger revenue to the cost of passenger train equipment was less in 1914 than in 1906.

SAFETY AND COMFORT OF PASSENGERS.

Very little statistical material has been submitted that discloses much definite information upon this subject, and in consequence the general statements made by some of the carriers are referred to as reflecting what has been done in the past 10 years or more to increase the safety and add to the general comfort of the traveling public. We quote here from a rather comprehensive statement submitted by the Atchison, Topeka & Santa Fe system:

There has been a continuous improvement in passenger service during the past 25 years. Not many years ago wooden underframe open platform cars were the best that any line offered. The first improvement was the vestibuled platform, which insured safe passage from one car to another and added to safety of transportation in other ways. The next step was the steel underframe; the final step the all-steel car.

¹ Expressed decimally, 24.260

Expressed decimally, 20.407.

³ Expressed decimally, 3.365.

⁴ Expressed decimally, 5.066.

⁵ Expressed decimally, 1.682.

⁶ Expressed decimally, 2.053.

Years ago candles were used for lighting coaches and chair cars. These were supplanted with oil lamps, next with Pintsch gas, and finally with electricity. Wood-burning stoves were supplanted with coal-burning stoves, and these in turn by hot-water circulation, and finally with steam heat. Modern toilets, wash rooms, sanitary water coolers, separate hand towels, and individual drinking cups have been installed from time to time to the added comfort and safety of the traveling public, which has in a measure increased the cost of transporting passengers.

The Chicago & North Western Railway Company calls attention to the fact that it has in addition to keeping up its equipment replaced during the past 10 years wooden bridges and culverts with permanent steel and concrete structures to the extent of 95,168 feet and installed 82 interlocking plants at railroad crossings and drawbridges. On account of heavier cars and locomotives the company has added heavier ballast and rails. To increase the safety of passenger travel automatic signals have been installed upon 210 miles of single track and main line and on 664 miles of double-track line.

The Chicago, Burlington & Quincy Railroad reports that it has in response to public demand enlarged and improved its passenger stations not only at the large cities such as Chicago and Kansas City, but at the smaller stations all along the road. These improvements consist of better waiting rooms with modern toilet facilities, electric lights, cement and brick sidewalks, shelter canopies, and various other facilities for the comfort and convenience of the public.

The Chicago, Milwaukee & St. Paul Railway reports that in comparison with 10 years ago the sleeping, parlor, and dining cars are more comfortable and that observation, club, and lounge cars have been introduced and generally supplied in connection with high-class through trains. Attention is directed also to the installation of automatic block signals, the reduction of grades, and the relocation of lines.

The Chicago, St. Paul, Minneapolis & Omaha maintains a night track patrol over the main line in severe winter weather and a systematic inspection of operating employees to insure safety.

The Missouri Pacific system reports, among other improvements adding to the safety and comfort of passengers, that it has been compelled either by state requirements or public demand to make the following improvements: To cover seats with linen or leather covers; to screen the passenger cars; to furnish water coolers, wash stands, head rest covers, electric lights and fans, ventilators, steam heat, cuspidors, additional toilets, flush hoppers; and to install vestibules on cars not so equipped. The total cost of applying these additional features in the passenger car service is \$405,241.23, and the additional costs in maintenance, exclusive of renewals, amount to \$71,892 per annum. The Missouri Pacific Railway during the period 1905 to 1914 expended \$296,025 for the installation of the block system at an annual cost of operation of approximately \$24,000.

The St. Louis, Iron Mountain & Southern Railway for the 10-year period ending June 30, 1914, in response to public demands constructed new passenger and combination station buildings which cost \$1,199,317, of which \$484,125 represents an expenditure required either by state authorities or local public opinion, and is asserted to be in excess of the actual requirement.

UNNECESSARY TRAIN SERVICE.

One of the interrogatories sent to the respondent carriers reads as follows:

Does respondent furnish any passenger train service which is considered unwarranted or unnecessary to meet the reasonable demands of the traveling public? If so, state the number of passenger train-miles and car-miles per annum which are considered unnecessary and give the reasons why such service is furnished.

Typical replies, which were general in character, are as follows:

Atchison, Topeka & Santa Fe system:

We do not voluntarily furnish any passenger train service which we consider unwarranted or unnecessary, but in some cases we have been obliged to furnish passenger transportation by order of state commissions and in other cases because of the pressure from commercial centers and communities.

Chicago & North Western:

This company's passenger service is all considered to be warranted.

Chicago, Burlington & Quincy:

The Burlington furnishes some passenger train service which it considers in excess of the real necessities of the traveling public. In some cases this is due to orders from competent authorities, state commissions, and the courts. In others it is due to fear of such orders, but the situation in this respect is so complicated that it is difficult to state definitely the train-miles and car-miles of passenger service so performed. * * * does not run any unwarranted or unnecessary passenger trains except of a local character.

Chicago, Milwaukee & St. Paul:

The conclusion that a passenger train service is considered unwarranted or unnecessary is an exercise of judgment. * * * While we have been obliged by state commissions to establish service that we consider unnecessary, we would not feel warranted in stating that our judgment, which was at variance with that of the railroad commissions, was absolutely correct.

Chicago, St. Paul, Minneapolis & Omaha:

We aim to run only such trains as will meet the reasonable demands of the public. We could, however, with economy run less trains and handle the volume of passenger traffic, but with inconvenience to the traveling public.

Great Northern:

Passenger train service on the heavy branch lines as a rule is warranted and perhaps necessary about five months out of such years as there are good crops, say July, August, September, October, and November. Some local trains on the main line

have been put on for no other purpose than to avoid the frequent stopping of through transcontinental trains, in order that they may meet the time of our competitors. On some branch lines we are obliged by order of railroad commissions to operate passenger trains in addition to freight where in our opinion a mixed train could readily handle both freight and passenger traffic. There was a time when we could change the service to suit business conditions, but we can not do it now without the consent of the commissions, and that it is very hard to get. There is, of course, a wide difference of opinion between the railway company and the public on the question of what service would be reasonable and warranted.

Minneapolis & St. Louis:

None of our passenger service is profitable in itself, but we do not operate any trains that could be discontinued without great inconvenience to the traveling public or without diverting both freight and passengers from our railroad.

Northern Pacific:

This company does not furnish any extra amount of passenger train service which is considered unwarranted or unnecessary to meet the reasonable demands of the traveling public and the competitive conditions. We have kept a close watch of this feature of our business, and in April, 1915, our passenger train mileage was 157,625 miles, or 15.89 per cent less than it was in April a year ago.

On the lines of the Chicago & Alton, Missouri Pacific, St. Louis, Iron Mountain & Southern, Rock Island, and the Wabash railroads a total of 1,833,950 train-miles per annum are reported which the carriers assert are in excess of the reasonable necessities of the public.

EFFECT OF INCREASING FARES.

It has been suggested that an increase in the existing fares in the territory here in question will result in a diminution of travel and a corresponding shrinkage in the revenues of the carriers. Travel is influenced by so many different factors that statistical proof of the existence of causal relations between the volume of the movement of passengers and the level of the fares is generally impossible. The general deduction that travel may be influenced by the level of the fares will probably not be challenged in any quarter; nor can there be found much ground for questioning the statement that where the change in fares is decidedly marked, a corresponding change in the amount of travel may be attributed wholly or in large part to such change. On the other hand, where changes in fares are relatively slight, it is doubtful whether any appreciable effect upon the volume of passenger movement will result therefrom. It is likewise obvious that that class of passengers to whom the amount of the fare represents practically the entire expense of a trip will be influenced much more by a change in the level of fares than the class of travelers to whom the charge for transportation represents only a fractional part of the expense of a trip. These observations apply to regular movements of passengers rather than to special movements resulting from

the publication of excursion or other reduced fares put into effect by railway companies to meet special situations. However much or little statistical proof can be adduced in support of any of these generalities is immaterial for our purposes. It is not the function of the Commission to prescribe either public policy or the managerial policy of carriers. Considerations of that character can be of little assistance in determining issues like those here presented. Our duty is to examine these fares with respect to their reasonableness.

There is no evidence of record pointing to any inadequacy of passenger service on the lines seeking these increases. Neither was there any representative of any state commission who was willing to admit that the local service afforded in the state he represented might be curtailed in any manner and thereby economies be brought about. Some criticism was, however, directed to the train service between important terminals as being excessive and out of proportion to that furnished on branch lines and between points where competition was less keen.

The evidence in this case has shown:

Substantial improvements in the passenger service have been made since 1900 at large expense to carriers, resulting in a greater degree of comfort, convenience, and safety to the traveling public.

The conditions under which the passenger service is performed do not admit of all the corresponding economies in operation that have been effected in the freight service.

The increased cost of service due to greater costs for labor, materials, and taxes not offset by corresponding economies which are practicable in operation, is entitled to consideration.

The passenger business in the territory principally affected by the proposed increases is less profitable than the freight business.

The basis for the fares now applied for the transportation of interstate passengers is less in this territory than in the states south, east, and west thereof.

There is some justification for a lower basis of fares in this territory than in the states west and south thereof.

This increased revenue which apparently should come from the passenger traffic should not, however, be altogether imposed upon the interstate traffic. Manifestly a person journeying by rail within the boundaries of a state can not expect to travel at the expense, in any degree, of the interstate passenger. State and interstate traffic should each contribute equitably to the return the carrier is entitled to earn on the value of its property devoted to the passenger service. The revenue of respondents from intrastate passenger traffic within these states is approximately 96 per cent of that from the interstate traffic. While we should permit reasonable interstate fares we can

not sanction fares that are higher than are reasonable for the service performed because intrastate fares are alleged or shown to be unduly low.

The increased cost of operation and the improved quality of service, together with the fact that the present passenger traffic is less profitable than the freight traffic, strengthen the proposal to increase passenger fares. The difference in passenger traffic density in the various states primarily affected and other conditions justify a somewhat lower basis for interstate fares in some sections than in others.

It is contended on behalf of some of the protestants that if a carrier obtains a fair return upon the whole of its business it can not reasonably complain of a public policy affording cheap travel at fares lower than would be justifiable when considered with reference to the cost and net results of the passenger service only.

To what extent the existing fares in the territory here involved and which are to be considered in connection with the proposed increased fares before us may have been affected or influenced by state fares prescribed pursuant to this policy, we are unable to say. Whatever may be said in support of this policy, we can find no justification in approving it in connection with interstate passenger service under a statute which does not authorize us to prescribe rates or fares less than are reasonable for the service rendered. "Just and reasonable" are the qualifying words which mark the character of charges that we are authorized to prescribe. These words clearly point to a service which is to be rendered in consideration of the charge. We think therefore that the principle embodied in the law is that each class of service should bear reasonable charges therefor, having due regard to the cost and value thereof, examined in the light of other pertinent considerations.

Cognizant, as we have indicated we are, of the infirmities of alleged book value of the railways as indicative of actual investment, and also of the infirmities in the various formulas suggested and discussed for allocating value of property and cost of service assignable to freight and passenger business, respectively, we have felt justified in using so-called book value as a basis of showing tendencies as to costs of service and net results. The allocation of property and cost of service as between freight and passenger business is to an extent feasible. We have, therefore, considered the evidence presented in respect to these questions, mindful of the limitations upon their helpfulness, and with other pertinent facts, circumstances, and conditions; among which are passenger fares in other parts of the country than the territory here involved, density of traffic, physical conditions, degree of development of the country through which the lines of the carriers run, all for the purpose of determining the ultimate

question before us of the reasonableness of the proposed increased fares under consideration.

The position that each service should be self-supporting seems substantiated by the Supreme Court of the United States.

In *Norfolk & Western Ry. Co. v. West Virginia*, 236 U. S., 604, it is said:

The passenger traffic is one of the main departments of the company's business; it has its separate equipment, its separate organization and management, and of necessity its own rates. In making a reasonable adjustment of the carrier's charges, the state is under no obligation to secure the same rate of return from each of the two principal departments of business, passenger and freight; but the state may not select either of these departments for arbitrary control. Thus, it would not be contended that the state might require passengers to be carried for nothing, or that it could justify such action by placing upon the shippers of goods the burden of excessive charges in order to supply an adequate return for the carrier's entire service. And, on the same principle, it would also appear to be outside the field of reasonable adjustment that the state should demand the carriage of passengers at a rate so low that it would not defray the cost of their transportation, when the entire traffic under the rate was considered, or would provide only a nominal reward in addition to cost. That fact, satisfactorily proved, would be sufficient to rebut the presumption of reasonableness; and if in any case it could be said that there existed other criteria by reference to which the rate could still be supported as a reasonable one for the transportation in question, it would be necessary to cause this to appear.

And in *Northern Pacific Ry. Co. v. North Dakota*, 236 U. S., 585:

The state insists that the enactment of the statute may be justified as "a declaration of public policy." In substance, the argument is that the rate was imposed to aid in the development of a local industry and thus to confer a benefit upon the people of the state. The importance to the community of its deposits of lignite coal, the infancy of the industry, and the advantages to be gained by increasing the consumption of this coal and making the community less dependent upon fuel supplies imported into the state, are emphasized. But while local interests serve as a motive for enforcing reasonable rates, it would be a very different matter to say that the state may compel the carrier to maintain a rate upon a particular commodity that is less than reasonable, or, as might equally well be asserted, to carry gratuitously, in order to build up a local enterprise. That would be to go outside the carrier's undertaking, and outside the field of reasonable supervision of the conduct of its business, and would be equivalent to an appropriation of the property to public uses upon terms to which the carrier had in no way agreed. It does not aid the argument to urge that the state may permit the carrier to make good its loss by charges for other transportation. If other rates are exorbitant, they may be reduced. Certainly, it could not be said that the carrier may be required to charge excessive rates to some in order that others might be served at a rate unreasonably low. That would be but arbitrary action. We can not reach the conclusion that the rate in question is to be supported upon the ground of public policy if, upon the facts found, it should be deemed to be less than reasonable.

The basic fare per mile for passenger travel in territory other than that directly affected by the proposed increases is pertinent to a consideration of the matter here in issue. It is recognized that the average receipts per passenger-mile in a given territory may diverge widely from the standard fare per mile in the same territory. Where

commutation traffic has been extensively developed, the receipts from such service will depress heavily the average receipts per passenger-mile. And similarly the extent to which excursion fares, half rate fares, and mileage book fares are accorded will cause the average receipts per passenger-mile to fall below the standard fare per mile. So, too, the extent to which long lines by an abatement in fares meet the competition of short lines to a common destination, and the extent to which state controlled fares preclude the application of higher fares for interstate travel will operate in the same general direction.

But to compare like with like, we may properly examine the standard fares per passenger-mile in the territory principally affected by the proposed increases with similar fares in surrounding territory. Upon this basis of comparison it will be found that on all sides of the territory principally affected the standard fares, both state and interstate, are generally upon a higher level. It will also be found that in the territory to the east the population per square mile, and per mile of railroad, as well as the density of passenger traffic per mile of railroad are notably greater than where fare increases are proposed. In New England the average receipts per passenger train-mile appear to be \$1.71; in trunk line territory, \$1.46; in central passenger association territory, \$1.32; and in western territory from \$1.33 to \$1.39. The passenger revenue per mile of road for 10 contrasted eastern and western carriers' averages \$9,006.13 for the former carriers as against \$2,941.90 for the latter. The number of passengers per mile of road averaged 392,442 for the 10 eastern carriers as against 117,413 for the 10 western carriers. The fare per mile for interstate travel in New England ranges from 2½ cents to 4 cents, and in trunk line territory from 2 cents to 3 cents. In central passenger association territory the basis is 2½ cents. In territory west of the Mississippi River the interstate bases vary, being 2 cents in most of the states, which have effective a 2-cent per mile state fare. In the Dakotas the basis is 2½ cents, the same as the state fare. In some of this territory, as in Oklahoma and Arkansas, the carriers maintain a 3-cent basis for interstate travel, although the fares for intrastate travel are set by the states at 2 cents per mile.

Where intrastate fares in the territory principally affected by the proposed increases are compared with similar fares elsewhere it is

¹ The carriers referred to are:

Eastern: Baltimore & Ohio; Boston & Maine; Cleveland, Cincinnati, Chicago & St. Louis; Pennsylvania; Pennsylvania Company; Pittsburgh, Cincinnati, Chicago & St. Louis; Vandalia; Lake Shore & Michigan Southern; New York Central & Hudson River; and New York, New Haven & Hartford.

Western: Atchison, Topeka & Santa Fe; Chicago & North Western; Chicago, Burlington & Quincy; Union Pacific; Chicago, Milwaukee & St. Paul; Chicago, Rock Island & Pacific; St. Louis & San Francisco; Missouri, Kansas & Texas; Missouri Pacific; and St. Louis, Iron Mountain & Southern.

found: First, that in practically all of the states where increases are proposed the state controlled fares are 2 cents per mile; second, that in only four or five other states, to wit, Ohio, Indiana, Illinois, Arkansas, and Oklahoma, at the time of the hearing was a similarly low fare in force; third, that in Rhode Island and New York the fares range from 2 cents to 2½ cents, with a very high density of passenger traffic; that in West Virginia, Alabama, North Dakota, and South Dakota the fare for intrastate travel is 2½ cents; that in Maine, Massachusetts, Vermont, Connecticut, and New Hampshire the state fare ranges from 2 cents to 4 cents; that in Kentucky, Tennessee, Mississippi, Louisiana, Washington, Texas, Montana, and more recently in Arkansas by reason of injunctions of a federal court, the state fare is 3 cents; that in the Carolinas, Georgia, and Florida the fare is seldom less than 2½ cents per mile; and that in California, Colorado, Oregon, Utah, Idaho, Arizona, Wyoming, and Nevada the range is from 3 cents to 6 cents. The appendix contains tables affording comparisons of fares, and of the relative density of population and traffic in the various regions compared.

The conditions on the roads in Missouri south of the Missouri River and in Kansas south of the Union Pacific Railroad from Kansas City to the Colorado state line are different from those on the roads north of that line.

The carriers have failed to justify the increased bases of 2.5 cents and 3 cents per mile, but have justified an increase in the basis for interstate fares in the states of Illinois, Wisconsin, the upper peninsula of Michigan, Minnesota, Iowa, Nebraska, Missouri north of the Missouri River from St. Louis to Kansas City, and Kansas on and north of the main line of the Union Pacific Railroad from Kansas City to the Colorado state line from 2 cents to 2.4 cents per mile.

The carriers have justified an increase in the basis for interstate fares in Missouri south of the Missouri River and in Kansas south of the main line of the Union Pacific Railroad from Kansas City to the Colorado state line from 2 cents to 2.6 cents per mile.

Proposed increases in fares from points within the territory primarily affected by these increases to points in the states east thereof, which may be arrived at by using the fares constructed on the bases herein found reasonable within the territory within which such bases apply and the lawfully published and filed fares in the states east of the territory described, have been justified.

Fares from points in the territory affected by these increases to points on the main lines of these carriers running westerly toward the Pacific coast and southerly through Oklahoma and Arkansas and states south and west thereof have not been justified in those instances where they are higher than would result by using the bases

herein given for the territory herein described and a basis of $2\frac{1}{2}$ cents per mile in the states of North and South Dakota and a basis of 3 cents per mile west and south of the territory described.

It is proposed to increase the charges for 1,000-mile tickets in the territory north of the Missouri River in Missouri and on and north of the main line of the Union Pacific Railroad in Kansas from 2 cents to $2\frac{1}{2}$ cents per mile and south of the line described to $2\frac{1}{2}$ cents per mile. These charges are lower per mile than the fares which we have found reasonable maxima and the increased charges are therefore justified.

Where fares calculated on these bases come out an even one-half cent or over, the carriers may round up to an even cent; where the calculation makes them come under one-half cent, they are to discard the fraction and take the next lower whole cent.

To avoid confusion an order will be entered requiring the cancellation of the suspended schedules and, following such cancellation, the respondents are hereby authorized to file new tariffs effective on or after December 29, 1915, on not less than five days' notice to the Commission and to the public containing fares not exceeding those herein found to have been justified.

HALL, *Commissioner*, dissents.

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APPENDIX

The tables in this appendix (numbers 24 to 42) are reproductions of that part of carriers' Exhibit No. 1 (witness L. E. Wettling) pertaining to group 1 roads, and supplement those appearing in the text of this report. Tables Nos. 43 to 46 are reproduced from the exhibits of other witnesses.

GROUP 1 ROADS.

Chicago & Alton.
Chicago & North Western.
Chicago, St. Paul, Minneapolis & Omaha.
Chicago, Burlington & Quincy.
Quincy, Omaha & Kansas City.
Chicago Great Western.
Chicago, Milwaukee & St. Paul.
Chicago, Rock Island & Pacific.
Chicago, Rock Island & Gulf.
Duluth, South Shore & Atlantic.
Great Northern.
Illinois Central.
Minneapolis & St. Louis.
Iowa Central.
Minneapolis, St. Paul & Sault Ste. Marie.
Wisconsin Central.
Missouri Pacific.
Northern Pacific.
St. Joseph & Grand Island.
Toledo, Peoria & Western.
Union Pacific.
Oregon-Washington Railroad & Navigation Company.
Oregon Short Line.
Wabash.

TABLE No. 24.—*Net cost of road and equipment, per mile of line owned, single track; line operated, single track; and line operated, all tracks.*

[Authority: Annual reports of railways to Interstate Commerce Commission.]

Years.	Net cost of road and equipment.	Miles of line owned, single track.	Cost per mile of line owned, single track.	Miles of line operated, single track.	Cost per mile of line operated, single track.	Miles operated, all tracks.	Cost per mile operated, all tracks.
1901.....	\$2,530,379,020	54,190.00	\$46,006	57,422.58	\$44,006	74,512.48	\$53,959
1902.....	2,590,334,309	55,912.52	46,328	58,834.75	44,027	77,254.51	38,530
1903.....	2,755,673,188	61,189.68	45,035	63,370.84	43,485	84,008.88	32,804
1904.....	2,826,349,169	61,919.34	45,646	64,853.03	43,581	85,931.44	32,891
1905.....	2,864,063,131	62,492.67	45,831	65,593.40	43,664	87,282.92	32,833
1906.....	2,922,018,113	63,632.30	45,920	66,469.80	43,960	89,501.76	32,648
1907.....	3,078,435,336	64,891.28	47,440	68,145.81	45,174	92,479.04	33,288
Total 1901 to 1907, inclusive.....	19,567,272,356	424,227.99	46,124	444,690.21	44,002	590,916.03	33,113
1908.....	3,204,388,859	64,604.35	49,600	69,930.92	45,822	95,870.65	33,424
1909.....	3,275,124,595	65,313.73	50,145	70,098.31	46,325	97,419.50	33,619
1910.....	3,628,714,153	68,798.57	52,744	74,462.49	48,782	102,682.22	35,339
1911.....	3,806,362,077	70,353.73	54,103	76,121.54	50,004	106,374.12	35,783
1912.....	3,911,297,057	70,915.46	55,154	77,134.44	50,707	108,511.62	36,045
1913.....	4,044,566,358	71,858.54	56,285	78,618.68	51,445	111,235.58	36,360
1914.....	4,235,338,117	73,533.57	57,597	79,496.95	53,277	114,198.01	37,088
Total 1908 to 1914, inclusive.....	26,105,791,216	485,377.95	53,784	526,463.33	49,587	736,291.70	35,456

TABLE No. 25.—*Aggregate of operating revenues, expenses, and income.*

[Authority: Annual reports of railways to Interstate Commerce Commission.]

Years.	Operating revenue.	Operating expenses.	Other items.	Net operating revenue.	Taxes.	Operating income.	Rentals, net lease of road.	Net operating income.
1901.....	\$390,330,995.20	\$233,810,161.58	.....	\$146,520,833.62	\$12,064,612.77	\$133,456,220.85	\$3,643,340.70	\$129,812,880.15
1902.....	424,654,821.69	255,092,017.54	.....	169,562,804.15	14,140,963.39	155,421,850.76	3,490,846.88	151,931,003.88
1903.....	478,082,032.29	291,062,201.76	.....	187,019,830.53	15,991,822.66	171,028,007.87	3,223,523.25	167,804,484.62
1904.....	493,984,868.41	312,548,949.23	.....	180,395,919.19	16,611,399.81	163,784,519.38	2,794,485.00	160,990,034.38
1905.....	517,038,587.74	323,183,162.36	.....	193,855,425.36	17,800,966.81	176,054,458.55	3,263,074.86	172,791,383.67
1906.....	580,443,393.61	358,969,144.43	.....	221,454,259.19	20,100,493.68	201,353,765.51	3,799,856.07	197,553,899.44
1907.....	642,776,004.26	411,396,794.85	.....	231,379,209.41	22,367,465.81	209,011,743.62	3,356,462.47	205,655,281.15
Total 1901 to 1907, inclusive.....	3,517,310,693.23	2,187,122,431.75	1,330,188,261.47	130,067,794.98	1,210,090,466.49	94,071,608.26	1,116,018,858.23

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1908.....	611, 179, 082. 43	408, 972, 622. 21	62, 611, 962. 24	308, 894, 467. 98	28, 068, 789. 41	180, 496, 702. 83	2, 822, 072. 43	177, 662, 630. 09
1909.....	637, 045, 562. 30	399, 639, 202. 95	6, 212, 229. 49	221, 196, 784. 86	24, 478, 897. 20	196, 720, 857. 56	2, 062, 672. 68	193, 668, 151. 88
1910.....	722, 045, 564. 83	479, 971, 262. 53	8, 682, 220. 58	234, 311, 944. 77	29, 985, 020. 78	204, 326, 924. 99	2, 488, 519. 63	201, 838, 402. 37
1911.....	719, 948, 999. 64	488, 212, 962. 70	7, 119, 508. 47	224, 616, 527. 47	20, 351, 852. 12	194, 263, 675. 25	4, 185, 578. 21	190, 078, 097. 14
1912.....	712, 222, 005. 64	468, 166, 192. 94	7, 206, 942. 22	212, 849, 866. 38	28, 561, 133. 26	179, 288, 783. 12	3, 785, 732. 51	178, 503, 000. 61
1913.....	806, 114, 712. 89	542, 604, 982. 54	8, 799, 776. 22	263, 710, 449. 13	36, 078, 652. 32	217, 631, 795. 81	4, 149, 363. 04	213, 482, 402. 77
1914.....	785, 266, 062. 37	589, 972, 682. 06	6, 245, 914. 15	239, 046, 482. 16	40, 849, 932. 06	198, 196, 554. 10	4, 476, 831. 45	193, 720, 722. 65
Total 1908 to 1914, inclusive.....	4, 983, 825, 042. 20	3, 246, 642, 272. 03	47, 857, 277. 47	1, 589, 326, 497. 70	218, 401, 242. 26	1, 370, 924, 249. 45	24, 969, 802. 94	1, 245, 954, 440. 51
Total 1901 to 1914, inclusive.....	8, 501, 125, 741. 42	5, 533, 764, 704. 78	47, 857, 277. 47	2, 919, 513, 789. 17	338, 498, 952. 18	2, 581, 014, 805. 99	49, 041, 412. 19	2, 531, 973, 387. 80

	Operating revenues.	Operating expenses, hire of equipment, joint facilities, etc.	Taxes.	Rentals, net lease of roads.	Net operating income.
Comparison of operating results per mile operated:					
1901-1907.....	\$7, 909. 58	\$4, 918. 31	\$270. 07	\$54. 13	\$2, 667. 07
1908-1914.....	9, 466. 61	6, 447. 74	414. 85	47. 43	2, 556. 59
Increase or decrease.....	1 1, 557. 03	1 1, 529. 43	1 144. 78	1 6. 70	1 110. 48
Comparison of operating results for each dollar of road and equipment cost:					
1901-1907.....	Cents. 17. 98	Cents. 11. 18	Cents. 0. 61	Cents. 0. 12	Cents. 6. 07
1908-1914.....	19. 09	13. 00	. 84	. 10	5. 15
Increase or decrease.....	1 1. 11	1 1. 82	1. 23	1. 02	1. 92
Percentages.....	6. 17	16. 28	37. 70	16. 67	15. 16

1 Increase.

2 Decrease.

TABLE No. 28.—*Aggregate cost of road and equipment, mileage operated, net operating income, and ratios 1901-1914, inclusive.*

[Authority: Annual reports of railways to Interstate Commerce Commission.]

Year.	Net cost of road and equipment.	Average miles operated.	Net operating income.	Per cent return on cost of road and equipment.	Value on which the net operating income is equivalent to 7 per cent.	Balance of value earning no return.	Net operating income per mile operated.	Equivalent to 7 per cent on value per mile.
1901.....	\$2,530,379,020	57,422.58	\$129,812,880.15	5.13	\$1,854,469,716	\$675,909,304	\$2,200.66	\$32,295
1902.....	2,580,334,399	58,854.75	151,931,013.88	5.87	2,170,442,912	419,891,487	2,582.33	26,890
1903.....	2,755,073,198	63,370.84	167,804,484.02	6.09	2,397,268,723	358,466,265	2,647.97	37,828
1904.....	2,826,349,169	64,853.03	160,940,034.38	5.70	2,279,857,634	526,491,535	2,482.38	35,463
1905.....	2,864,083,131	65,563.40	172,791,383.67	6.03	2,468,448,338	395,634,793	2,634.28	37,632
1906.....	2,922,018,113	66,469.80	197,553,899.44	6.76	2,822,198,563	99,819,550	2,972.08	42,458
1907.....	3,078,435,336	68,145.81	205,135,261.15	6.66	2,930,503,731	147,931,605	3,010.24	43,003
Total 1901 to 1907, inclusive.....	19,567,272,356	444,690.21	1,186,018,947.29	6.06	16,943,127,817	2,624,144,539	2,667.07	38,101
1908.....	3,204,348,859	69,930.92	177,663,630.09	5.54	2,538,051,868	666,337,001	2,640.56	36,294
1909.....	3,275,124,595	70,698.31	193,648,181.88	5.91	2,766,688,313	508,436,282	2,739.36	39,134
1910.....	3,628,714,153	74,462.49	201,838,405.37	5.56	2,893,405,791	745,308,362	2,710.61	38,723
1911.....	3,806,362,077	76,121.54	190,078,097.14	4.99	2,715,401,388	1,090,960,689	2,497.03	35,672
1912.....	3,911,297,057	77,134.44	175,803,000.61	4.49	2,507,185,723	1,404,111,334	2,275.29	32,504
1913.....	4,044,566,358	78,618.68	213,482,402.77	5.28	3,049,748,611	994,817,747	2,715.42	38,792
1914.....	4,235,338,117	79,498.95	193,720,722.65	4.57	2,767,438,895	1,467,899,222	2,436.83	34,812
Total 1908 to 1914, inclusive.....	26,105,791,216	526,463.33	1,345,954,440.51	5.16	19,227,920,579	6,877,870,637	2,556.59	36,523
Total, 1901 to 1914, inclusive.....	45,673,063,572	971,153.54	2,531,973,387.80	5.54	36,171,048,396	9,502,015,176	2,607.18	37,246
Total and average, 1901 to 1907, inclusive.....	19,567,272,356	444,690.21	1,186,018,947.29	6.06	16,943,127,817	2,624,144,539	2,667.07	38,101
Total and average, 1908 to 1914, inclusive.....	26,105,791,216	526,463.33	1,345,954,440.51	5.16	19,227,920,579	6,877,870,637	2,556.59	36,523

TABLE NO. 27.—Comparative Income, 1901-1914, cost of road and equipment, operating revenue, expenses, and income.

[Authority: Annual reports of railways to Interstate Commerce Commission.]

1 Includes hire of equipment, joint facilities, etc., taxes, and net rentals for lease of road.

TABLE No. 28.—Increased labor costs due to increase in wage scales.
[Authority: Annual reports of railways to Interstate Commerce Commission.]

Years.	Days and compensation including general officers.					Days and compensation excluding general officers.				
	Number of days.	Compensation.	Average daily.	Per cent increase over 1900.	Amount of increase.	Number of days.	Compensation.	Average daily.	Per cent increase over 1900.	Amount of increase.
1900.....	70,036,932	\$137,835,927.46	\$1.97	.....	.....	69,791,550	\$134,723,605.37	\$1.93	.....	.....
1901.....	73,758,428	145,606,957.77	1.97	.....	.....	73,525,164	142,455,993.97	1.94	0.52	\$735,251.04
1902.....	80,129,407	158,375,988.83	1.96	0.51	8901,294.07	79,895,681	155,155,015.23	1.94	.52	798,956.81
1903.....	90,094,922	184,161,592.48	2.04	3.55	9,303,644.54	89,849,808	180,691,209.81	2.01	4.15	7,187,960.16
1904.....	92,526,862	195,740,721.42	2.12	7.61	11,879,029.30	92,268,837	191,216,520.69	2.07	7.25	12,916,235.78
1905.....	90,111,331	192,621,548.59	2.14	8.63	15,318,926.27	89,853,167	188,828,153.36	2.10	8.81	15,275,038.39
1906.....	99,265,171	214,672,463.44	2.16	9.64	18,854,682.49	98,972,967	210,628,501.36	2.13	10.36	19,794,597.40
1907.....	113,240,801	253,264,744.70	2.24	12.71	30,575,016.27	112,869,574	248,995,731.74	2.21	14.51	31,603,564.72
Total 1901 to 1907, inclusive	639,091,922	1,344,444,017.23	2.10	6.60	85,735,592.94	687,226,202	1,317,971,086.96	2.07	7.25	88,311,004.90
1908.....	109,436,282	250,371,139.19	2.29	16.24	35,019,610.24	109,215,188	246,421,907.18	2.26	17.10	36,041,012.04
1909.....	110,911,209	249,735,601.59	2.25	14.21	31,055,138.52	110,669,789	245,771,177.86	2.23	15.03	32,094,224.31
1910.....	128,631,595	309,434,872.04	2.33	18.27	46,307,374.20	128,351,883	294,738,699.74	2.30	19.17	47,490,198.71
1911.....	125,025,160	300,717,732.94	2.41	22.34	55,011,070.40	124,841,592	296,263,623.50	2.37	22.80	54,930,300.48
912.....	127,254,581	310,720,391.78	2.44	23.86	59,809,653.07	126,992,776	305,850,048.03	2.41	24.87	60,956,532.48
1913.....	137,945,473	346,134,703.37	2.51	27.41	74,490,555.42	137,701,594	341,040,116.51	2.48	28.50	75,735,576.70
1914.....	134,928,695	340,242,167.91	2.52	27.92	74,210,782.25	134,686,445	334,956,710.70	2.49	28.02	75,424,408.20
Total 1908 to 1914, inclusive	874,132,995	2,097,356,509.42	2.40	21.83	375,904,184.10	872,489,217	2,005,042,263.51	2.37	22.89	363,672,551.92
Total 1901 to 1914, inclusive. Average 1908 to 1914, inclusive, over average 1901 to 1907, inclusive.....	1,513,229,917	3,441,800,826.65	2.27	15.23	461,639,777.04	1,509,694,419	3,383,013,309.47	2.24	16.66	470,994,156.82
.....	.....	.....	.....	14.29	.....	.....	.....	.....	14.49	.....

TABLE NO. 29.—*Increase in cost of labor and taxes per dollar of revenue, 1901-1914.*

[Authority: Annual reports of railways to Interstate Commerce Commission.]

Decrease.

TABLE No. 30.—Increased cost for labor and taxes, 1901-1914.

Year.	Taxes.	Taxes.			Labor.		Total labor and taxes.	
		On basis of 1901 rate.	Excess over 1901.	Excess per mile of road operated.	Excess over 1901.	Excess per mile of road operated.	Per mile of road operated.	Per cent to net cost of road and equip-ment.
1901.....	\$13,044,612.77	\$13,366,125.50	\$774,827.89	\$13.17	\$801,294.07	\$13.62	\$26.79	0.06
1902.....	11,140,933.39	14,219,273.65	1,772,549.01	27.97	6,306,641.54	99.52	127.49	.29
1903.....	15,991,522.66	14,583,961.71	2,027,438.10	31.26	13,879,028.30	214.00	245.26	.56
1904.....	16,611,399.81	14,778,668.96	3,022,297.85	46.07	15,318,926.27	233.54	279.61	.64
1905.....	17,800,966.81	15,077,613.46	5,022,870.22	75.57	18,854,682.49	283.66	359.23	.82
1906.....	20,100,483.68	15,884,726.33	6,502,789.48	95.42	30,575,016.27	448.67	544.09	1.20
1907.....	22,387,465.81	16,534,646.51	6,564,112.90	93.87	35,019,610.24	500.77	594.64	1.30
1908.....	23,096,759.41	16,899,642.91	7,576,254.39	107.16	31,055,133.52	439.26	546.42	1.18
1909.....	24,475,597.30	18,724,165.08	11,260,855.75	151.23	46,307,374.20	621.88	773.11	1.59
1910.....	29,985,020.78	19,640,828.32	10,711,023.80	140.71	55,011,070.40	722.66	863.37	1.73
1911.....	30,351,852.12	20,192,292.81	13,378,840.45	173.45	59,809,653.07	775.39	948.84	1.87
1912.....	33,561,133.26	20,869,962.41	15,208,690.91	193.45	74,490,555.42	947.49	1,140.94	2.22
1913.....	36,078,653.32	21,854,344.68	18,995,587.38	238.95	74,210,782.25	933.50	1,172.45	2.30
1914.....	40,849,932.06							

TABLE No. 31.—Operating revenues, labor, taxes, and other expenses, and balances available for interest, dividends, and surplus, 1901-1914.

87 I. C. Q.

[Authority: Annual reports of railways to Interstate Commerce Commission.]

Years.	Total amounts.					Amounts per mile of road operated.				
	Gross operating revenue.	Labor.	Taxes.	Material and other items.	Balance available for interest, dividends, and surplus.	Gross operating revenue.	Labor.	Taxes.	Material and other items.	Balance available for interest, dividends, and surplus.
1901.....	\$380,330,996.20	\$145,606,957.77	\$13,064,612.77	\$91,846,544.51	\$129,812,880.15	\$6,623.36	\$2,535.70	\$227.52	\$1,599.48	\$2,260.66
1902.....	424,654,821.69	158,375,988.83	14,140,953.39	100,206,875.59	151,931,003.88	7,217.75	2,691.88	240.35	1,703.19	2,582.33
1903.....	478,082,032.29	184,161,592.48	15,991,822.66	110,124,132.53	167,804,484.62	7,544.19	2,906.09	252.35	1,737.77	2,647.98
1904.....	493,984,868.41	195,740,721.42	16,611,399.81	120,642,712.80	160,990,034.38	7,616.99	3,018.23	256.14	1,860.26	2,482.38
1905.....	517,038,537.74	192,621,548.59	17,800,966.81	133,824,688.67	172,791,383.67	7,882.48	2,936.60	271.38	2,040.22	2,634.28
1906.....	580,443,383.61	214,672,463.44	20,100,483.68	148,116,537.05	197,553,899.44	8,732.43	3,229.63	302.40	2,228.32	2,972.08
1907.....	642,776,004.28	253,264,744.70	22,387,465.81	161,988,532.62	205,135,261.15	9,482.36	3,716.51	328.52	2,377.09	3,010.24
Total 1901 to 1907, inclusive.....	3,517,310,603.23	1,344,444,017.23	120,097,704.93	866,750,023.77	1,186,018,947.29	7,909.58	3,023.33	270.07	1,949.11	2,667.07
1908.....	611,179,068.48	250,371,139.19	23,098,759.41	160,045,559.79	177,663,630.09	8,739.75	3,580.26	330.31	2,288.62	2,540.56
1909.....	627,048,593.30	249,735,601.59	24,475,897.30	159,168,912.53	198,668,181.88	8,869.35	3,532.41	346.20	2,251.38	2,739.36
1910.....	722,045,564.88	299,434,872.64	29,985,020.78	190,787,266.09	201,838,406.37	9,696.77	4,021.28	402.68	2,562.20	2,710.61
1911.....	719,948,999.64	300,717,732.94	30,351,852.12	198,801,317.44	190,078,097.14	9,457.88	3,950.49	398.73	2,611.63	2,497.03
1912.....	713,222,005.64	310,720,291.78	33,561,133.26	193,437,579.99	175,503,000.61	9,246.47	4,028.29	435.10	2,507.79	2,273.29
1913.....	805,114,713.89	346,134,703.37	36,078,653.32	209,418,954.43	213,482,402.77	10,240.76	4,402.70	458.91	2,663.73	2,715.42
1914.....	785,266,082.37	340,242,167.91	40,849,932.06	210,453,259.75	193,720,722.65	9,877.93	4,279.94	513.85	2,647.31	2,436.83
Total 1908 to 1914, inclusive.....	4,963,825,048.20	2,097,356,509.42	218,401,248.26	1,322,112,850.02	1,345,964,440.51	9,466.61	3,983.86	414.85	2,511.31	2,556.59

[Authority: Annual reports of railways to Interstate Commerce Commission.]

WESTERN PASSENGER FARES.

Years.	Freight traffic.					Passenger traffic.				
	Tons one mile.	Freight train-miles. ¹	Tons per train-mile.	Freight car-miles.	Tons per car-mile.	Passengers one mile.	Passenger train-miles. ¹	Passengers per train-mile.	Passenger car-miles.	Passengers per car-mile.
1901.....	31,942,452,850	129,086,090	247.49	3,133,777,115	10.19	3,762,152,829	93,526,246	40.23	496,604,940	7.58
1902.....	35,648,391,764	132,520,921	269.00	3,367,719,569	10.59	4,415,844,016	99,152,509	44.54	532,743,829	8.29
1903.....	40,424,494,349	145,159,141	278.48	3,691,899,294	10.95	4,969,268,533	107,947,811	46.03	585,812,367	8.48
1904.....	40,780,537,003	145,206,118	280.85	3,733,289,610	10.92	5,172,396,492	110,123,254	46.97	605,301,198	8.55
1905.....	44,055,757,563	142,609,447	308.93	3,911,078,464	11.26	5,878,773,351	114,111,558	51.52	638,567,531	9.21
1906.....	51,571,348,448	153,499,245	385.97	4,297,561,185	12.00	6,084,124,976	118,307,381	51.43	670,172,839	9.08
1907.....	56,076,753,365	164,101,450	341.71	4,416,236,650	12.70	6,896,983,057	127,440,533	54.12	716,483,156	9.63
Total 1901 to 1907, inclusive....	300,498,735,342	1,012,162,412	296.89	26,551,561,887	11.32	37,179,573,254	770,609,292	48.25	4,245,685,860	8.76
1908.....	51,851,899,980	154,701,481	335.17	4,284,443,180	12.10	7,366,797,765	126,962,622	58.03	720,406,477	10.23
1909.....	52,168,632,746	154,854,199	336.89	4,420,253,730	11.80	7,685,674,780	129,438,984	59.38	750,718,835	10.24
1910.....	60,038,390,771	176,826,358	339.53	4,940,334,134	12.15	8,903,306,780	149,665,894	59.49	859,959,067	10.35
1911.....	59,013,466,553	170,237,256	346.65	4,974,964,188	11.86	8,709,289,117	153,116,394	56.88	896,804,531	9.82
1912.....	60,182,490,411	162,705,237	369.88	4,881,728,131	12.33	8,322,920,248	158,193,094	52.61	923,570,740	9.01
1913.....	71,683,206,713	175,213,117	409.12	5,467,067,139	13.11	8,691,241,742	160,378,136	54.19	949,853,956	9.15
1914.....	68,494,124,450	165,083,250	414.91	5,431,728,750	12.63	8,978,757,639	161,504,711	55.59	975,320,952	9.21
Total 1908 to 1914, inclusive....	492,432,211,624	1,159,620,898	365.15	34,390,539,252	12.31	58,657,988,071	1,039,249,835	56.44	6,066,633,558	9.67

¹ Includes mixed train-miles.

TABLE No. 34.—Traffic density per mile of road operated, single track, 1901-1914.

[Authority: Annual reports of railways to Interstate Commerce Commission.]

Years.	Miles of road operated, single track.	Tons one mile.	Ton-miles per mile of road.	Per cent increase over 1901.	Passengers one mile.	Passenger-miles per mile of road.	Per cent increase over 1901.
1901.....	57,422.58	31,942,452,850	556,270	.....	3,762,182,829	65,517	.....
1902.....	58,834.75	35,648,391,764	605,907	8.92	4,415,844,016	75,055	14.56
1903.....	63,370.84	40,424,494,349	637,903	14.68	4,969,268,533	78,416	19.69
1904.....	64,853.03	40,780,537,003	628,815	13.04	5,172,396,492	79,756	21.73
1905.....	65,593.40	44,055,757,563	671,649	20.74	5,878,773,351	89,624	36.79
1906.....	66,469.80	51,571,348,448	775,861	39.48	6,084,124,976	91,532	39.71
1907.....	68,145.81	56,075,753,365	822,879	47.93	6,896,983,057	101,209	54.48
Total, 1901 to 1907, inclusive.....	444,690.21	300,498,735,342	675,748	21.48	37,179,573,254	83,608	27.61
1908.....	69,930.92	51,851,899,980	741,473	33.29	7,366,797,765	106,344	60.79
1909.....	70,698.31	52,168,632,746	737,905	32.65	7,685,674,780	108,711	65.93
1910.....	74,462.49	60,038,390,771	806,290	44.96	8,903,306,780	119,568	82.50
1911.....	76,121.54	59,013,466,553	775,253	39.37	8,709,289,117	114,413	74.63
1912.....	77,134.44	60,182,490,411	780,229	40.26	8,322,920,248	107,901	64.69
1913.....	78,618.68	71,683,206,713	911,783	63.91	8,691,241,742	110,549	68.73
1914.....	79,496.95	68,494,124,450	861,594	54.89	8,978,757,639	112,945	72.39
Total, 1908 to 1914, inclusive.....	526,463.33	423,432,211,624	804,296	44.59	58,657,968,071	111,419	70.06

TABLE NO. 35.—*Aggregate of freight ton-miles, revenue per ton per mile, passenger miles, and revenue per passenger per mile.*

[Authority: Annual reports of railways to Interstate Commerce Commission.]

TABLE NO. 36.— *Maintenance expenses, 1901-1914, per cent of operating revenue and of cost of road and equipment.*

[Authority: Annual reports of railways to Interstate Commerce Commission.]

Years.	Maintenance of way and structures.			Maintenance of equipment.			Total maintenance.	
	Total amount.	Per cent of operating revenue.	Per cent of cost of road and equipment.	Total amount.	Per cent of operating revenue.	Per cent of cost of road and equipment.	Per cent of operating revenue.	Per cent of cost of road and equipment.
1901.....	\$40,023,448.23	15.75	2.37	\$39,820,233.08	10.47	1.57	26.25	3.94
1902.....	64,539,194.94	15.20	2.49	43,972,163.61	10.35	1.70	25.55	4.19
1903.....	67,905,419.11	14.20	2.46	51,177,417.15	10.70	1.86	24.90	4.32
1904.....	65,891,294.31	13.34	2.33	56,747,142.83	11.49	2.01	24.83	4.34
1905.....	67,106,127.28	12.98	2.34	63,765,319.26	12.33	2.23	25.31	4.57
1906.....	74,409,177.97	13.16	2.61	74,032,838.52	12.75	2.53	25.91	5.14
1907.....	85,490,085.32	13.30	2.78	82,903,689.92	12.90	2.69	26.20	5.47
Total 1901 to 1907 inclusive.....	487,364,747.16	13.86	2.49	412,418,804.37	11.73	2.11	26.59	4.60
1908.....	85,804,942.54	14.04	2.68	82,018,109.43	13.42	2.56	27.46	5.24
1909.....	82,740,959.91	13.20	2.53	83,634,666.40	13.34	2.55	26.54	5.03
1910.....	103,634,850.39	14.35	2.86	97,732,267.87	13.54	2.69	27.89	5.55
1911.....	94,768,313.98	13.16	2.49	101,601,459.78	14.11	2.67	27.27	5.16
1912.....	93,820,931.16	13.15	2.40	103,952,536.46	14.58	2.66	27.73	5.06
1913.....	107,188,502.24	13.31	2.65	118,321,279.01	14.70	2.93	28.01	5.53
1914.....	107,041,079.70	13.63	2.53	121,488,754.50	15.47	2.87	29.10	5.40
Total 1908 to 1914 inclusive.....	674,999,579.92	13.54	2.59	708,749,073.45	14.22	2.71	27.76	5.30

TABLE No. 37.— *Maintenance expenses, 1901-1914, amount per mile operated, single track and all tracks.*

[Authority: Annual reports of railways to Interstate Commerce Commission.]

Years.	Maintenance of way and structures.			Maintenance of equipment.			Total maintenance.	
	Total amount.	Amount per mile operated, single track.	Amount per mile operated, all tracks.	Total amount.	Amount per mile operated, single track.	Amount per mile operated, all tracks.	Amount per mile operated, single track.	Amount per mile operated, all tracks.
1901.....	860,023,448.23	\$1,045.29	\$805.55	\$39,820,233.08	\$693.46	\$534.41	\$1,738.75	\$1,330.96
1902.....	64,539,194.94	1,006.96	835.41	43,972,163.61	747.38	599.18	1,844.34	1,404.59
1903.....	67,905,419.11	1,071.55	808.36	51,177,417.15	807.59	609.23	1,879.14	1,417.59
1904.....	65,891,264.31	1,016.01	766.79	56,747,142.83	876.01	660.38	1,891.02	1,427.17
1905.....	67,106,127.28	1,023.06	769.28	63,765,319.26	972.13	720.97	1,995.19	1,500.26
1906.....	76,409,177.97	1,149.53	853.72	74,032,838.52	1,113.78	827.16	2,263.31	1,680.88
1907.....	85,490,065.32	1,254.52	924.42	82,903,689.92	1,216.56	896.46	2,471.08	1,820.88
Total, 1901 to 1907, inclusive.....	487,364,747.16	1,085.96	824.76	412,418,804.37	927.43	697.93	2,023.39	1,522.69
1908.....	85,804,942.54	1,227.00	895.01	82,018,109.43	1,172.84	855.51	2,399.84	1,750.52
1909.....	82,740,969.91	1,170.34	849.33	83,634,666.40	1,182.98	858.50	2,353.32	1,707.83
1910.....	103,634,850.39	1,391.77	1,009.28	97,732,267.87	1,312.51	951.79	2,704.28	1,961.07
1911.....	94,768,313.98	1,244.96	890.90	101,601,459.78	1,334.73	955.13	2,579.69	1,846.03
1912.....	93,820,931.16	1,216.33	864.62	103,952,536.46	1,347.68	957.98	2,564.01	1,822.60
1913.....	107,188,502.24	1,363.40	963.62	118,321,279.01	1,506.00	1,063.70	2,863.40	2,027.32
1914.....	107,041,079.70	1,346.48	957.33	121,488,754.50	1,528.22	1,063.84	2,874.70	2,001.17
Total, 1908 to 1914, inclusive.....	674,999,579.92	1,282.14	916.76	708,749,073.45	1,346.25	962.59	2,628.39	1,879.35

TABLE No. 38.—Maintenance expenses per car-mile, 1901-1914.
[Authority: Annual reports of railways to Interstate Commerce Commission.]

Years.	Maintenance of way and structures.					Maintenance of equipment.					Total maintenance.	
	Totals.	Freight. ¹	Per car-mile.	Passenger. ¹	Per car-mile.	Totals.	Freight. ²	Per car-mile.	Passenger. ²	Per car-mile.	Freight, per car-mile.	Passenger, per car-mile.
1901.....	800,023,448.23	835,125,721.91	Cents. 1.121	\$24,897,726.32	Cents. 5.014	\$39,820,283.08	\$29,765,624.23	Cents. 0.950	\$10,054,608.85	Cents. 2.025	Cents. 2.071	Cents. 7.039
1902.....	64,539,194.94	37,768,336.88	1.121	26,770,858.06	5.025	43,972,163.61	32,869,192.30	.976	11,102,971.31	2.084	2.097	7.109
1903.....	67,905,419.11	39,738,251.26	1.076	28,167,167.85	4.808	51,177,417.15	38,255,119.32	1.036	12,922,297.83	2.206	2.112	7.014
1904.....	66,891,204.31	38,559,585.43	1.033	27,331,708.88	4.515	56,747,142.83	42,418,489.27	1.136	14,328,653.56	2.367	2.169	6.882
1905.....	67,103,127.28	39,270,505.68	1.004	27,835,621.60	4.399	63,766,319.26	47,664,576.16	1.219	16,100,743.11	2.521	2.223	6.880
1906.....	76,409,177.97	44,714,650.96	1.040	31,694,527.02	4.729	74,082,838.52	55,339,546.79	1.268	18,693,291.73	2.789	2.328	7.518
1907.....	85,490,085.32	50,028,797.93	1.133	35,461,287.39	4.949	82,903,689.92	61,970,508.22	1.403	20,933,181.70	2.922	2.536	7.871
Total, 1901 to 1907, inclusive.	457,364,747.16	285,205,850.04	1.074	202,158,897.12	4.762	412,418,804.37	308,283,056.28	1.161	104,135,748.09	2.453	2.285	7.215
1908.....	85,804,942.54	50,213,052.38	1.172	35,591,890.16	4.941	82,018,109.43	61,308,536.80	1.431	20,709,572.63	2.875	2.603	7.816
1909.....	82,740,959.91	48,420,009.74	1.095	34,320,950.17	4.572	83,624,066.40	62,516,913.13	1.414	21,117,753.27	2.813	2.509	7.385
1910.....	103,634,850.39	60,647,114.45	1.228	42,987,735.94	4.999	97,782,267.87	73,064,870.28	1.479	24,677,397.64	2.870	2.707	7.899
1911.....	94,768,313.98	55,458,417.34	1.115	39,309,896.64	4.433	101,601,459.78	76,947,091.19	1.527	26,654,368.59	2.893	2.642	7.326
1912.....	93,820,931.16	54,904,008.92	1.125	38,916,922.24	4.214	103,962,536.46	77,704,521.00	1.592	26,248,015.46	2.842	2.717	7.056
1913.....	107,188,502.24	62,726,711.51	1.147	44,461,790.73	4.681	118,321,279.01	88,445,156.06	1.618	29,876,122.95	3.145	2.765	7.826
1914.....	107,041,079.70	62,641,914.85	1.155	44,399,164.85	4.552	121,488,754.50	90,818,528.82	1.675	30,670,225.68	3.145	2.830	7.697
Total, 1908 to 1914, inclusive.	674,999,579.92	395,011,229.19	1.149	279,988,380.73	4.616	708,749,073.45	539,795,617.28	1.541	178,963,456.23	2.960	2.690	7.565

¹ Division on basis of 1914: Average of 5 bases, 58.52 per cent freight; 41.48 per cent passenger.

² Division on basis of 1914: 74.75 per cent freight; 25.25 per cent passenger.

TABLE No. 39.—Maintenance expenses per ton-mile and per passenger-mile, 1901-1914.

[Authority: Annual reports of railways to Interstate Commerce Commission.]

Years.	Maintenance of way and structures.					Maintenance of equipment.					Total maintenance.	
	Totals.	Freight. ¹	Per ton-mile.	Passenger. ²	Per passenger-mile.	Totals.	Freight. ¹	Per ton-mile.	Passenger. ²	Per passenger-mile.	Freight, per ton-mile.	Passenger, per passenger-mile.
1901.....	\$60,023,448.23	\$35,125,721.91	Cents. 0.1100	\$24,897,726.32	Cents. 0.0613	\$39,820,263.08	\$29,765,624.23	Cents. 0.0932	\$10,054,638.85	Cents. 0.2673	Cents. 0.2032	Cents. 0.9291
1902.....	64,539,194.94	37,768,326.88	.1059	26,770,868.06	.0602	43,972,163.61	32,869,192.30	.0922	11,102,971.31	.2614	.1981	.8576
1903.....	67,906,419.11	39,738,251.26	.0983	28,167,167.85	.0608	51,177,417.15	38,265,119.32	.0946	12,922,297.83	.2600	.1929	.8268
1904.....	65,891,294.31	38,559,585.43	.0946	27,331,708.88	.0594	56,747,142.83	42,418,489.27	.1040	14,328,653.56	.2770	.1966	.8064
1905.....	67,106,127.28	39,270,806.68	.0891	27,835,321.60	.0735	63,765,319.26	47,664,576.15	.1082	16,100,743.11	.2739	.1973	.7474
1906.....	76,409,177.97	44,714,650.95	.0867	31,694,527.02	.0509	74,082,838.52	55,339,546.79	.1073	18,693,291.73	.2072	.1940	.8281
1907.....	85,490,085.32	50,028,797.93	.0892	35,461,287.39	.0512	82,903,689.92	61,970,508.22	.1105	20,933,181.70	.3035	.1997	.8177
Total 1901 to 1907, inclusive.	437,364,747.16	285,205,850.04	.0949	202,158,897.12	.0537	412,418,804.37	308,283,066.28	.1026	104,135,748.09	.2801	.1975	.8238
1908.....	85,804,942.54	50,213,062.38	.0968	35,591,890.16	.04831	82,018,109.43	61,308,536.80	.1182	20,709,572.63	.2811	.2150	.7642
1909.....	82,740,969.91	48,420,009.74	.0928	34,320,950.17	.0465	83,634,666.40	62,516,913.13	.1198	21,117,753.27	.2748	.2126	.7212
1910.....	103,634,850.39	60,647,114.45	.1010	42,987,735.94	.0428	97,732,267.87	73,054,870.23	.1217	24,677,397.64	.2772	.2227	.7600
1911.....	94,768,313.98	55,458,417.34	.0940	39,309,896.64	.0514	101,601,459.78	75,947,091.19	.1287	25,654,368.59	.2946	.2227	.7460
1912.....	93,820,931.16	54,904,008.92	.0912	38,916,922.24	.0676	103,952,536.46	77,704,521.00	.1291	26,248,015.46	.3154	.2203	.7830
1913.....	107,188,502.24	62,728,711.51	.0875	44,461,790.73	.0516	118,321,279.01	88,445,156.08	.1234	29,876,122.95	.3437	.2109	.8553
1914.....	107,041,079.70	62,641,914.85	.0915	44,399,164.85	.0495	121,488,754.50	90,818,528.82	.1326	30,670,225.68	.3416	.2241	.8361
Total 1908 to 1914, inclusive.	674,999,579.92	395,011,229.19	.0933	279,968,350.73	.04773	708,749,073.45	529,795,617.28	.1251	178,953,456.22	.3051	.2184	.7824

¹ Division on basis of 1914: Average of five bases, 58.52 per cent freight; 41.48 per cent passenger.

² Division on basis of 1914: 74.75 per cent freight; 25.25 per cent passenger.

TABLE No. 40.—Division of operating expenses between freight and passenger, 1914.

Operating expenses.	Total.	Freight.	Passenger.	Per cent freight.	Per cent passenger.	Bases for dividing maintenance of way and structures expenses.
Base I:						I. Operating expenses divided between freight and passenger, per approved formula adopted or customarily used by the carrier.
Maintenance of way and structures.....	\$107,041,079.70	\$61,135,500.20	\$45,902,579.50	57.12	42.88	II. Engine ton-miles (sometimes termed "locomotive weight miles," and computed for revenue service trains only. Weight of locomotive includes tender and 60 per cent of weight of capacity in water and fuel). Engine ton-miles of mixed trains divided between freight and passenger on basis of the number of car-miles, freight and passenger, respectively, run in such mixed trains.
Maintenance of equipment.....	121,488,754.50	90,831,600.47	30,657,154.03			
Traffic expenses.....	17,166,564.18	8,848,657.78	8,297,906.40			
Transportation expenses.....	275,255,532.79	191,832,579.63	83,402,953.16			
General expenses.....	19,021,750.89	11,368,201.49	7,653,549.40			
Total operating expenses.....	539,973,682.06	364,059,539.57	175,914,142.49	67.42	32.58	
Base II:						III. Revenue train-miles (freight and passenger, respectively, with the proper addition of switch or yard engine-miles and mixed train-miles). Revenue mixed train-miles spread over freight and passenger service on the same basis as previously indicated under the head, "engine ton-miles."
Maintenance of way and structures.....	\$107,041,079.70	59,089,223.15	47,951,856.55	55.20	44.80	
Maintenance of equipment.....	121,488,754.50	90,816,222.06	30,672,532.44			
Traffic expenses.....	17,166,564.18	8,871,351.11	8,295,213.07			
Transportation expenses.....	275,255,532.79	191,846,784.59	83,408,748.20			
General expenses.....	19,021,750.89	11,374,083.30	7,647,667.59			
Total operating expenses.....	539,973,682.06	361,997,664.21	177,976,017.85	67.04	32.96	In addition to the usual compilation of revenue train-miles, consideration is given to the use made of tracks by switch or yard engines, and the freight and passenger activities of such engines, accomplished by adding to the freight and passenger service revenue train-miles, respectively, a suitable proportion of the switch or yard engine-miles. This division between freight and passenger service is made upon the basis of the assignment of such switch or yard locomotive-miles, as determined by carriers since July 1, 1914, in compliance with Interstate Commerce Commission classification of train-miles, locomotive-miles, etc., effective that date, i. e., on the time basis, and applying the ratios resulting from such experience.
Base III:						IV. Locomotive repair and transportation cost basis. After division has been made between freight and passenger, of locomotive repairs, I. C. C. account No. 25 (repairs to switch locomotives excluded); wages of engine-men, I. C. C. account No. 80; fuel for road locomotives, I. C. C. account No. 82; water for road locomotives, I. C. C. account No. 83; lubricants for road locomotives, I. C. C. account No. 84; other supplies for road locomotives, I. C. C. account No. 85; wages of trainmen, I. C. C. account No. 88; and train supplies and expenses, I. C. C. account No. 89, the sum of the assignments of the foregoing expenses to freight and passenger, respectively, are resolved into percentages of the total of such accounts, and upon these percentages the entire maintenance of way and structures expenses are divided between freight and passenger.
Maintenance of way and structures.....	107,041,079.70	61,497,074.11	45,544,005.59	57.45	42.55	
Maintenance of equipment.....	121,488,754.50	90,813,659.00	30,675,095.50			
Traffic expenses.....	17,166,564.18	8,870,126.87	8,296,437.31			
Transportation expenses.....	275,255,532.79	191,830,734.64	83,424,798.15			
General expenses.....	19,021,750.89	11,373,773.73	7,647,977.16			
Total operating expenses.....	539,973,682.06	364,385,370.35	175,588,311.71	67.48	32.52	
Base IV:						
Maintenance of way and structures.....	107,041,079.70	67,746,439.92	39,294,639.78	63.29	36.71	
Maintenance of equipment.....	121,488,754.50	90,813,659.00	30,675,095.50			
Traffic expenses.....	17,166,564.18	8,870,371.73	8,296,192.45			

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29	Transportation expenses.....	273,265,532.79	191,801,629.06	83,453,903.74
1	General expenses.....	19,021,750.89	11,376,250.29	7,645,500.60
	Total operating ex- penses.....	539,973,682.06	370,608,349.98	169,365,332.08	68.63	31.37
C.	Basis V:					
C.	Maintenance of way and structures.....	107,041,079.70	63,738,336.88	43,302,742.82	59.55	40.45
	Maintenance of equip- ment.....	121,488,754.50	90,817,503.59	30,671,250.91	.....	.....
	Traffic expenses.....	17,166,564.18	8,869,147.48	8,297,416.70	.....	.....
	Transportation expenses.....	275,255,532.79	191,804,360.70	83,451,172.09	.....	.....
	General expenses.....	19,021,750.89	11,374,702.44	7,647,048.45	.....	.....
	Total operating ex- penses.....	539,973,682.06	366,604,061.09	173,369,630.97	67.89	32.11
	Basis VI:					
	Maintenance of way and structures.....	107,041,079.70	62,641,914.85	44,399,164.85	58.52	41.48
	Maintenance of equip- ment.....	121,488,754.50	90,818,528.82	30,670,225.68	.....	.....
	Traffic expenses.....	17,166,564.18	8,869,930.99	8,296,633.19	.....	.....
	Transportation expenses.....	275,255,532.79	191,827,218.12	83,428,314.67	.....	.....
	General expenses.....	19,021,750.89	11,373,402.25	7,648,348.64	.....	.....
	Total operating ex- penses.....	539,973,682.06	365,530,995.03	174,442,687.03	67.69	32.31

V. Same as Basis II, except includes a proper proportionment of switch or yard engine ton-miles.

VI. Average of the combination of all the foregoing bases.

In Bases II, III, IV, V, and VI, all expenses other than maintenance of way and structures expenses remain practically the same as in Basis I.

TABLE No. 41.—Operating results, freight and passenger, 1914.

Items.	Total.	Freight.	Per cent of total.	Passenger	Per cent of total.	Ratio of expense to revenue.			Ratio net operating income to cost of road and equip- ment		
						Total	Freight	Passen- ger.	Total.	Freight.	Passen- ger.
						Per cent.	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.
Operating revenue.....	8785, 266, 042. 37	8557, 133, 258. 66	70. 95	9228, 132, 823. 71	29. 05						
Basis I:											
Operating expenses.....	539, 973, 682. 06	364, 059, 539. 57	67. 42	175, 914, 142. 49	32. 58						
Hire of equipment, joint facilities, etc.....	6, 245, 914. 15										
Rentals, net, lease of road.....	4, 475, 831. 45	34, 769, 626. 04		16, 802, 052. 58							
Taxes.....	40, 849, 932. 06										
Total operating expenses.....	591, 545, 359. 72	398, 829, 164. 65		192, 716, 195. 07		75. 33	71. 59	84. 48			
Net operating income.....	193, 720, 722. 65	158, 304, 094. 01		35, 416, 628. 64					4. 57	5. 54	2. 57
Net cost of road and equipment.....	4, 235, 338, 117. 00	2, 855, 464, 958. 48	67. 42	1, 379, 873, 158. 52	32. 58						
Basis II:											
Operating expenses.....	539, 973, 682. 06	361, 997, 664. 21	67. 04	177, 976, 017. 85	32. 96						
Other expenses and taxes.....	51, 571, 677. 66	34, 573, 652. 70		16, 908, 024. 96							
Total operating expenses.....	591, 545, 359. 72	396, 571, 316. 91		194, 974, 042. 81		75. 33	71. 18	85. 47			
Net operating income.....	193, 720, 722. 65	160, 561, 941. 75		33, 158, 780. 90							
Net cost of road and equipment.....	4, 235, 338, 117. 00	2, 839, 370, 673. 64	67. 04	1, 395, 937, 443. 36	32. 96				4. 57	5. 65	2. 38
Basis III:											
Operating expenses.....	539, 973, 682. 06	364, 265, 370. 35	67. 48	175, 898, 311. 71	32. 52						
Other expenses and taxes.....	51, 571, 677. 66	34, 800, 568. 08		16, 771, 109. 58							
Total operating expenses.....	591, 545, 359. 72	399, 185, 938. 43		192, 669, 421. 29		75. 33	71. 66	84. 33			
Net operating income.....	193, 720, 722. 65	187, 947, 320. 23		35, 773, 402. 42							
Net cost of road and equipment.....	4, 235, 338, 117. 00	2, 868, 006, 161. 35	67. 48	1, 377, 351, 965. 65	32. 52				4. 57	5. 88	2. 69
Basis IV:											
Operating expenses.....	539, 973, 682. 06	370, 668, 348. 93	68. 68	169, 305, 393. 08	31. 37						
Other expenses and taxes.....	51, 571, 677. 66	36, 393, 642. 38		16, 178, 035. 28							
Total operating expenses.....	591, 545, 359. 72	406, 061, 991. 31		185, 483, 428. 36		75. 33	72. 87	81. 33			

	198, 720, 722.65	151, 151, 206.20	68.63	42, 559, 456.35	31.37	75.33	72.00	83.26	4.57	5.20	2.21
Net operating income.....	198, 720, 722.65	151, 151, 206.20	68.63	42, 559, 456.35	31.37	75.33	72.00	83.26	4.57	5.20	2.21
Net cost of road and equipment.....	4, 235, 338, 117.00	2, 806, 712, 549.70	67.86	1, 328, 638, 567.30	32.11	75.33	72.00	83.26	4.57	5.20	2.21
Basis V:											
Operating expenses.....	539, 973, 682.06	365, 604, 051.09	67.86	173, 309, 630.97	32.11	75.33	72.00	83.26	4.57	5.20	2.21
Other expenses and taxes.....	51, 571, 677.66	35, 612, 011.96	67.86	16, 559, 665.70	32.11	75.33	72.00	83.26	4.57	5.20	2.21
Total operating expenses.....	591, 545, 359.72	401, 616, 063.05	67.86	189, 929, 296.67	32.11	75.33	72.00	83.26	4.57	5.20	2.21
Basis VI:											
Operating expenses.....	193, 720, 722.65	155, 517, 195.61	67.89	38, 203, 527.04	32.11	75.33	72.00	83.26	4.57	5.20	2.21
Other expenses and taxes.....	4, 235, 338, 117.00	2, 876, 371, 047.63	67.89	1, 359, 967, 069.37	32.11	75.33	72.00	83.26	4.57	5.20	2.21
Total operating expenses.....	539, 973, 682.06	365, 530, 995.03	67.89	174, 442, 087.03	32.11	75.33	72.00	83.26	4.57	5.20	2.21
Basis VII:											
Operating expenses.....	539, 973, 682.06	365, 530, 995.03	67.89	174, 442, 087.03	32.11	75.33	72.00	83.26	4.57	5.20	2.21
Other expenses and taxes.....	51, 571, 677.66	34, 908, 868.61	67.89	16, 662, 809.05	32.11	75.33	72.00	83.26	4.57	5.20	2.21
Total operating expenses.....	591, 545, 359.72	400, 439, 863.64	67.89	191, 105, 496.08	32.11	75.33	72.00	83.26	4.57	5.20	2.21
Basis VIII:											
Operating expenses.....	193, 720, 722.65	156, 693, 395.02	67.89	37, 027, 327.63	32.11	75.33	72.00	83.26	4.57	5.20	2.21
Other expenses and taxes.....	4, 235, 338, 117.00	2, 866, 900, 371.40	67.89	1, 368, 437, 745.60	32.11	75.33	72.00	83.26	4.57	5.20	2.21
Total operating expenses.....	539, 973, 682.06	365, 530, 995.03	67.89	174, 442, 087.03	32.11	75.33	72.00	83.26	4.57	5.20	2.21

TABLE NO. 43.—*Passenger fare per mile, population per square mile, passenger revenue and population per mile of road, by states.*

^a Estimated.

^b 1912.

^c The testimony regarding the basis for interstate fares in Arkansas was conflicting. In an exhibit filed by one of carriers' witnesses this basis is shown as 2½ cents per mile. Another of carriers' witnesses stated that the basis was 3 cents per mile. It is understood that recently the basis for interstate fares in Arkansas has been fixed by federal injunction at 3 cents per mile.

^d Rates not given, but none less than 2½ cents.

TABLE NO. 44.—Average population per square mile and per mile of road, by territories.

Territory	Average population per square mile.	Average population per mile of railroad.
Trunk line.....	136	755
New England.....	106	837
Central.....	83	434
Western.....	24	261
Western territory north of the Missouri River and line of the U. P. R. R., including the states of Illinois, Iowa, Minnesota, Nebraska, Wisconsin, and parts of Missouri and Kansas.....	40.8	(1)
Western territory south of the Missouri River and line of the U. P. R. R., including the states of Arkansas, Oklahoma, and parts of Missouri and Kansas.....	28.2	(1)

¹Not given.

TABLE NO. 45.—Comparison of passenger statistics for 10 eastern and 10 western roads.

Item.	Ten eastern roads: B. & O.; B. & M.; C., C., C. & St. L.; P. R. R.; Pa. Co.; P., C., C. & St. L.; Vandalia; L. S. & M. S.; N. Y. C. & H. R.; N. Y., N. H. & H.		Ten western roads: A., T. & S. F.; C. & N. W.; C., B. & Q.; U. P.; C., M. & St. P.; C., R. I. & P.; St. L. & S. F.; M., K. & T.; Mo. Pac.; St. L., I. M. & S.	
	Average.	Lowest.	Average.	Lowest.
Passenger revenue per mile of road.....	\$9,006.13	\$3,727.57	\$2,941.90	\$1,612.80
Passenger service train revenue per train-mile (including mixed trains).....	\$1.545	\$1.142	\$1.311	\$0.954
Number of revenue passengers per mile of road.....	392,442	128,483	117,413	66,196
Average number of revenue passengers per train-mile (including mixed trains).....	67	(1)	52	(1)

¹Not given.

TABLE NO. 46.—Comparison of population and passenger statistics, by territories.

Item	New England territory.	Trunk line territory.	Central territory.	Western territory.	
				13 roads. ¹	25 roads. ¹
Population per square mile.....	105.7	136.7	89.8	.....	24.9
Population per mile of railroad.....	827	750	444	.....	244
Passenger fare per mile.....	2½-4½	2-3	2½	.....	2-3
Percentage of the total population in each territory.....	10.2	37.8	24.5	.....	27.5
Percentage of the total railroad mileage in each territory.....	5.4	21.8	23.9	.....	42.9
Average passenger train revenue per mile of railroad.....	\$8,913.00	\$7,676.00	\$4,110.00	\$2,961.00	\$2,849.00
Average number of passengers carried 1 mile per mile of road.....	431,387	357,779	169,743	124,009	112,732
Average distance in miles each passenger was carried.....	19.45	25.45	39.65	44.39	49.57
Average receipts per passenger per mile (cents).....	1.777	1.755	1.917	1.912	2.037
Average receipts per passenger train-mile (train-miles including one-fourth of mixed train-miles).....	\$1.7116	\$1.4642	\$1.3207	\$1.3330	\$1.3993

¹ The 13 roads are: Chicago & Alton; Chicago & North Western; Chicago, Burlington & Quincy; Chicago Great Western; Chicago, Rock Island & Pacific; Chicago, St. Paul, Minneapolis & Omaha; Illinois Central; Minneapolis & St. Louis; Minneapolis, St. Paul & Sault Ste. Marie; Missouri Pacific; St. Joseph & Grand Island; Union Pacific; and Wabash.

The 25 roads include the 13 above named and 12 additional roads as follows: Atchison, Topeka & Santa Fe; Chicago, Milwaukee & St. Paul; Duluth, South Shore & Atlantic; Great Northern; Green Bay & Western; Kansas City Southern; Missouri & North Arkansas; Missouri, Kansas & Texas; Northern Pacific; St. Louis & San Francisco; St. Louis, Iron Mountain & Southern; and St. Louis Southwestern.

No. 7086.¹
D. BERGMAN & COMPANY
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted January 18, 1915. Decided November 23, 1915.

Defendants' rates for the transportation of green salted hides, in carloads, from St. Paul and Minneapolis, Minn., to Chicago, Ill., and Chicago rate points found to be unreasonable to the extent that they exceed the rates contemporaneously in effect from the same points to the same destinations on packing-house products, in carloads.

L. R. Frankel for complainants.

W. D. Burr for Chicago & North Western Railway Company and Chicago, St. Paul, Minneapolis & Omaha Railway Company.

C. A. Lahey for Chicago, Milwaukee & St. Paul Railway Company.

A. H. Lossow for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are corporations and copartnerships engaged in the hide and fur business with offices at St. Paul, Minn., Chicago, Ill., and Minneapolis, Minn. By complaints filed in July, 1914, they allege that the rate of 20 cents per 100 pounds charged by defendants for the transportation of green salted hides, carloads, from St. Paul and Minneapolis to Chicago and grouped points, including Milwaukee, Wis., is unreasonable to the extent that it exceeds 16 cents per 100 pounds.

Prior to May 1, 1910, defendants published a commodity rate of 15.7 cents per 100 pounds on packing-house products, including green salted hides, from St. Paul and points taking the same rates, including, among other points, South St. Paul, Minneapolis, and Minnesota Transfer, Minn., to Chicago and grouped points. On May 1, 1910, this rate was increased to 20 cents per 100 pounds. On

¹ The proceeding also embraces complaints in—No. 7086 (Sub-No. 1), *Charles Friend & Company v. Same*; No. 7086 (Sub-No. 2), *Andersch Brothers v. Same*; No. 7086 (Sub-No. 3), *McMillan Fur & Wool Company v. Same*; and No. 7086 (Sub-No. 4), *Bolles & Rogers v. Same*.

August 1, 1911, defendants excluded hides from the commodity item covering packing-house products and published a separate commodity rate on hides from and to the points involved, but on the same basis as the rate applicable on packing-house products. Effective July 1, 1914, defendants published a rate of 16 cents per 100 pounds on packing-house products from South St. Paul to Chicago and Chicago rate points and on July 9, 1914, made the same rate applicable also from St. Paul, Minneapolis, and Minnesota Transfer. No reduction was made in the rate on hides from and to the same points. Complainants contend that the rate on hides from and to the points involved is unreasonable to the extent that it exceeds the rate contemporaneously applicable on packing-house products, relying on *Crowdus Bros. v. A., T. & S. F. Ry. Co.*, 29 I. C. C., 449; 32 I. C. C., 355, in which we held that rates on hides from certain points of origin in Oklahoma to St. Louis, Mo., East St. Louis, Ill., and certain other destinations should not exceed the rates on packing-house products contemporaneously in effect from and to the same points.

The western classification, which applies in the absence of commodity rates from and to the points involved, rates hides with packing-house products, and hides and packing-house products generally take the same rates throughout western classification territory. The rates are the same, for example, from Missouri River points, southern Minnesota, and Iowa to Chicago. In our original report in the *Crowdus Bros. case*, *supra*, we said:

The inherent characteristics of hides and pelts, many of which are matters of common knowledge, are not such as to justify any higher rate than on packing-house products. They load heavily. The loading in the instant case being apparently above 40,000 pounds on the average. The risk of loss or damage is comparatively slight; they can be loaded in any kind of box cars and no expedited service is required.

Some of complainants' shipments of hides averaged about 36,000 pounds per car, but otherwise the findings in the *Crowdus Bros. case* are corroborated by the record now before us.

We find that the carload rates on hides from St. Paul and Minneapolis to Chicago, and points taking the Chicago rates, are, and for the future will be, unreasonable to the extent that they exceed the rates contemporaneously in effect from and to the same points on packing-house products in carloads. An order will be entered accordingly.

No. 7652.
CHICAGO LUMBER & COAL COMPANY
v.
**MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAM-
SHIP COMPANY ET AL.**

Submitted June 10, 1915. Decided November 23, 1915.

Charges collected by defendants for the transportation of lumber in carloads from Bayou Sale and Baldwin, La., to milling points and reshipped to various interstate destinations found to have been unlawful. Reparation awarded.

R. W. Hall for complainant.

G. B. Hild for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of lumber, with its principal office at East St. Louis, Ill. By complaint, filed January 9, 1915, it alleges that defendants' refusal to apply their transit rules and regulations on certain carload shipments of lumber moved during the period from January 30 to July 14, 1913, from Bayou Sale and Baldwin, La., to milling points where the lumber was planed or dressed and reshipped to various interstate destinations subjected complainant to unreasonable and unlawful charges. Reparation is asked.

The tariff rule in issue provided that "lumber, carloads, may be stopped in transit at stop-over point, planed or dressed or resawed and reshipped in carloads," the through rate to destination to be the rate from point of shipment or from the milling point, whichever was higher. The tariff containing the rule also provided that upon satisfactory evidence of reshipment of planed or dressed or resawed lumber the carriers would refund the difference between the charges on the inbound shipment and charges on the difference in weight between the inbound and outbound shipment. The rate on the difference in weight ranged from 1 cent to 2 cents per 100 pounds, dependent upon the distance from the original point of shipment to the milling point, with a minimum charge of \$5 per car. The local rates from points of origin to milling points here involved were from 3 cents to 5½ cents per 100 pounds, and the distance from 2 miles to

19.8 miles. The shipments involved, with one exception, were planed or dressed in part only, and defendants justify their refusal to apply their transit rule on the ground that the rule required the planing or dressing or resawing of the entire shipments. Complainant contends that the only condition imposed was that the entire shipments should move on to destination.

Effective October 15, 1913, defendants published a rule providing transit service on lumber planed or dressed or resawed, in whole or in part, and reshipped to destination.

We are of the opinion upon this record, and so find, that defendants' contention is not well founded, and that the operation of the tariff rule may not properly be considered as restricted to shipments of lumber wholly planed, dressed, or resawed. It follows that charges assessed in excess of charges which would have accrued on the basis of the refunds permitted by the tariff were unlawful. We further find that complainant made the shipments involved and paid freight charges thereon herein found to have been unlawful; that complainant has been damaged to the extent of the difference between the charges paid and the charges which would have accrued if the refunds had been made, and that it is entitled to reparation.

Complainant should prepare a statement showing as to each shipment on which reparation is claimed the date of movement, points of origin and destination, route, car number and initials, weight, rate applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainant and verified by defendants, we will consider further the entry of an order awarding reparation.

37 I. C. C.

No. 7940.
**UNITED STATES CAST IRON PIPE & FOUNDRY
COMPANY**

v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted July 6, 1915. Decided November 23, 1915.

Rate charged by defendants for the transportation of cast-iron pipe and fittings in carloads from Anniston and Bessemer, Ala., to El Segundo, Cal., found unjustly discriminatory. Reparation denied because the unlawful prejudice is not shown to have resulted in damage to complainant.

***Garrard Winston* for complainant.**

***D. L. Meyers* for Atchison, Topeka & Santa Fe Railway Company.**

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of cast-iron pipe, castings, etc., with its principal office at Burlington, N. J. By complaint filed April 22, 1915, it alleges that a rate of 75 cents per 100 pounds charged by defendants for the transportation of 37 carloads of cast-iron water pipe and fittings from Anniston and Bessemer, Ala., to El Segundo, Cal., during the period from August 1, 1911, to December 10, 1911, inclusive, was unduly prejudicial and unreasonable to the extent that it exceeded 65 cents per 100 pounds. Reparation is asked. The claim on one shipment was presented to the Commission informally January 23, 1913, and on the remaining shipments on July 26, 1913.

Cast-iron water pipe and fittings are manufactured in the Philadelphia and Pittsburgh, Pa., districts and in the Buffalo, N. Y., Cleveland and Cincinnati, Ohio, Lynchburg, Va., Anniston and Bessemer, Ala., districts. Manufacturers located in these districts compete in the Pacific coast markets, and prior to July 31, 1911, the rate to El Segundo from all of these districts was 75 cents per 100 pounds, composed of the Pacific coast terminal rate of 65 cents to Los Angeles, Cal., and a rate of 10 cents beyond. El Segundo is 17 miles west of Los Angeles on a branch line of the Atchison, Topeka & Santa Fe Railway from Los Angeles to Redondo, Cal. On July 3, 1911, the Santa Fe instructed the joint agent issuing the trans-continental tariffs to publish the same rates to El Segundo and other

stations on the Redondo branch as to Pacific coast terminals. Pursuant to these instructions a rate of 65 cents per 100 pounds on cast-iron pipe and fittings was made effective July 31, 1911, by the special permission of the Commission, from all of the above-named producing districts except Anniston and Bessemer. The 65-cent rate was not established from Anniston and Bessemer until December 11, 1911, because of objections interposed by the lines serving those points. A number, if not all, of the carriers defendant that participated in the 75-cent rate from Anniston and Bessemer also participated in the 65-cent rate contemporaneously in effect from the competing producing districts named. Defendants deny that the 75-cent rate was unreasonable, but the Santa Fe, which was the only carrier represented at the hearing, conceded that the maintenance of a higher rate from Anniston and Bessemer than from competing points of production in the east discriminated against complainant.

We have found before that rates from the eastern half of the United States to Pacific coast terminals are depressed by water competition and have authorized the maintenance of lower rates to the Pacific coast than to intermediate points. *Fourth Section Order No. 124.* In *Commodity Rates to Pacific Coast Terminals*, 32 I. C. C., 611, it was stated that the 65-cent rate on cast and wrought iron pipe in carloads from Atlantic seaboard territory to Pacific coast terminals was the lowest of the many commodity rates therein involved. A through rate from Anniston and Bessemer to El Segundo of 75 cents can not be condemned as unreasonable. But defendants' failure to maintain during the period in question the previous parity of rates between the Anniston and Bessemer districts and competing districts in the east discriminated against complainant unjustly. It does not appear, however, that complainant was damaged by the discrimination. The pipe was sold f. o. b. destination, and the payment of the 75-cent rate reduced complainant's prevailing "shop" or net price of the material approximately \$2 per ton, but it does not appear that the selling price was affected in any way by competition with manufacturers located at points from which the 65-cent rate applied. On the contrary, it appears that a rate of 65 cents was employed in fixing the selling price solely because complainant had been advised by the carriers that such a rate would be published.

The complaint will be dismissed.

37 I. C. C.

**LAKE LINE APPLICATIONS UNDER PANAMA CANAL
ACT.**

No. 6504.

**LEHIGH VALLEY RAILROAD COMPANY (LEHIGH VAL-
LEY TRANSPORTATION COMPANY; LAKE LINE
ONLY).**

Submitted October 23, 1915. Decided December 13, 1915.

The petition above described does not request a rehearing on the evidence but merely a reconsideration of the question whether a competitive relationship exists between the Lehigh Valley Railroad Company and the Lehigh Valley Transportation Company such as is contemplated by section 5 of the act as amended; *Held*, No reason appears tending to show that the previous findings of the Commission that the Lehigh Valley Railroad Company does or may compete with the Lehigh Valley Transportation Company within the meaning of section 5 as amended was in error. Petition will be dismissed.

R. W. Barrett for Lehigh Valley Railroad Company.

W. H. Chandler for Boston Chamber of Commerce.

C. J. Austin for New York Produce Exchange.

G. A. Schroeder for Chamber of Commerce of Milwaukee.

F. E. Williamson for Buffalo Chamber of Commerce.

J. S. Brown and *J. C. Jeffery* for Chicago Board of Trade.

REPORT OF THE COMMISSION UPON REHEARING.

McCHORD, Chairman:

The Lehigh Valley Railroad Company, as owner of the entire capital stock of the Lehigh Valley Transportation Company, which operates six vessels on the great lakes, filed a petition for rehearing on September 18, 1915, requesting the Commission to reopen and reconsider the petitioner's application for permission to continue its lake line service after July 1, 1914. The Commission, in *Lake Line Applications under Panama Canal Act*, 33 I. C. C., 700, had previously denied the original petition of this carrier under section 5 as amended, such denial to be effective December 15, 1915. The subject matter of the present petition was set for argument on October 23, 1915, solely upon the question whether the Commission's order of May 7, 1915, in so far as it affected the Lehigh Valley Railroad Company, should be modified.

Subsequent to the filing of the petition by the railroad company petitions for permission to intervene were filed by the Milwaukee Chamber of Commerce and the Chicago Board of Trade. These parties were permitted to intervene.

While the petition requested a rehearing it was conceded by counsel for the railroad company at the argument that no reason had been suggested why the case should be reheard. The only issue raised was whether or not the Commission had erred in assuming jurisdiction to deny the application of the Lehigh Valley Railroad for permission to continue its lake service. In other words, the only question now before the Commission is whether or not the Lehigh Valley Railroad Company does, or may, compete with its lake line so as to bring it within the provision of section 5 as amended. The petition of the railroad company was based upon two grounds: (1) That the Commission's finding of fact that competition does or may exist between the railroad company and its lake line was erroneous; and (2) that the Commission's interpretation of the word "competition," as used in section 5 as amended, was, as a matter of law, unsound. It will be observed that these propositions, if true, would establish that the Commission had no jurisdiction over the Lehigh Valley Railroad lake service under section 5 as amended.

In support of the petitioner's first contention it was urged that the Commission erred in finding that this carrier's participation in joint rates and through routes with railroad companies which parallel the Lehigh Valley Transportation Company tended to show competition between this carrier and its lake line, since joint rates and through routes may be prescribed by the Commission, and it is contrary to reason to assume that a relationship which the Commission itself could establish is sufficient to give the Commission jurisdiction to order a divorcement. It was further urged that the Commission erred in finding that the participation of the railroad company in fast freight lines which compete with the lake service tended to show competition, since these fast freight lines are said to be mere trade names employed for advertising purposes, and in fact imply no more than the existence of joint rates and through routes.

It will be manifest from a reading of the Commission's original opinion that the two considerations just noted were not deemed by the Commission in themselves to be conclusive evidence of competition. The participation of the railroad company in fast freight lines, joint rates, and through routes, which run parallel to through routes in which the lake line participates, were deemed significant as showing that in addition to the purely local traffic of the railroad and the lake line, as to which there could be no competition, these companies were largely interested in through traffic as to which there might be competition. The above circumstances, together with the large volume of evidence showing aggressive activities of the Trunk Line Association and the Lake Lines Association, to which the Lehigh Valley Railroad Company was a party, in developing

and extending the traffic over the all-rail through routes at the expense of the lake-and-rail routes, including that in which the lake line participated, demonstrated that the possibility of competition for through traffic between the railroad company and its rail connections and the lake line was real and substantial—so real and substantial that the railroad company acting with other trunk lines organized and maintained the Lake Lines Association, a chief function of which was the controlling of lake rates and service in such a manner as to advance the interests of the all-rail routes.

The second contention of the petitioner was that in spite of all the facts of record the Commission could not, as a matter of law, find that competition did or might exist between the petitioner and its lake line, because competition as a matter of law could not exist between two carriers unless one was “striving” for traffic which the other one was actively seeking and wished to secure, and that such a relationship could not exist between the petitioner and its lake line since the latter was merely an extension of the former. The record discloses that the lake line has an annual deficit of about \$100,000 which must be borne by the petitioner. Why the railroad company should be anxious to continue its interest in the lake line in spite of this annual deficit is a question that immediately suggests itself. One of the officials of the railroad who should be familiar with all of its traffic and rate interests testified that he could not tell whether the lake line was a benefit or a burden to the railroad from a dollars and cents standpoint, but that one reason which he was certain led the railroad to maintain its interest in this lake line was to secure for the railroad a voice in the making of the all-rail rates from Chicago to the east.

This leads to the inquiry, What interest has the Lehigh Valley Railroad in the all-rail rates from Chicago to the east? Its chief interest obviously is in the amount of the division of the all-rail rate which it is able to exact from its rail connections. If the Lehigh Valley was wholly dependent on its rail connections they would be in a position to dictate the division it would receive. While the Lehigh Valley has a lake line, however, it has a voice in what the all-rail rate should be and, what is more important, it is in a position to demand large divisions of these rates. The record shows, as might be expected under such conditions, that on most of the eastbound traffic the Lehigh Valley Railroad divisions of the all-rail rate from Chicago to the east are larger than its division of the lake-and-rail rate for the same haul. Thus it has come about that the railroad gets more revenue out of the all-rail haul than out of the lake-and-rail haul on a particular shipment. Here, then, is a situation where the interest of the Lehigh Valley Railroad directly conflicts with the interest of the lake line. To the extent that the Lehigh Valley Rail-

road is induced by its division of the all-rail rates to divert traffic from the lake-and-rail to the all-rail route it is "striving" against the lake line which it owns.

That this conflict of interest between the railroad and the lake line as to through traffic is not academic, but, on the contrary, exerts a real influence on the traffic policy of the railroad is made clear by the record. A letter from one official of the railroad company to another in 1904 is in the record, wherein it was stated that in connection with the eastbound movement of flour from Chicago "the old question" was presented "whether it is better to allow this business to go via central traffic roads and go after them for a share of it or make arrangements at Buffalo which would bolster up our lake line and concentrate freight there for shipment to the east." The official who wrote this letter testified that the situation from the standpoint of freight solicitation was the same to-day as in 1904. Thus it appears that the solicitation of eastbound traffic by the railroad is not done with an eye single to the interests of the lake line in the haul from Chicago to Buffalo, but is influenced by the interests of the central freight association roads which, with the aid of the Lehigh Valley Railroad, directly compete with the lake line.

The above considerations make clear that as to a large volume of through traffic eastbound the petitioner does or may "strive" in the interest of the all-rail routes for traffic which the lake line might otherwise secure. The facts referred to in the original report of the Commission tend to show a "striving" in another way by the railroad company in the interest of the all-rail route for westbound traffic from New York to Chicago which might otherwise move by the rail-and-lake route. The record discloses many other facts which, together with those referred to above, show competition within the definition of that word which was given by the Supreme Court in the *Union Pacific Case*, 226 U. S., at pages 61, 87.

The interveners at the argument did not address themselves to the issue raised by the petition of the railroad company. These interveners confined their remarks to a statement as to the hardship that might be imposed upon certain shippers if the lake line were divorced from the railroad company. Their statement reflected the uncertainty that attends a change effected by legislation. The views urged by the interveners have no bearing upon the question as to the proper interpretation and application of the act to the facts at hand.

After reviewing its previous findings and order in the light of the present proceeding no reason appears why the Commission should modify its order denying the application of the petitioner as to its lake line service. An order will be entered dismissing the petition for rehearing.

No. 7280.¹
BOARDMAN COMPANY
v.
SOUTHERN PACIFIC COMPANY ET AL.

Submitted April 15, 1915. Decided November 9, 1915.

Upon complaints asking reparation on account of switching charges collected by defendants on interstate carload shipments received or delivered prior to August 12, 1914, at complainants' plants situated on private or industrial sidetracks within the switching limits of Los Angeles, San Francisco, San Diego, Sacramento, San Jose, Crockett, and Alvarado, Cal., and Reno, Nev.; *Held*, That reparation should be denied. Complaints dismissed.

W. P. Seeds for Wood Curtis Company, Reno Mercantile Company, H. C. Heidtmann, A. Lane & Company, E. L. Drappo, Buffalo Bottling Company, and Frank Brothers.

Seth Mann for San Francisco Chamber of Commerce.

D. L. Levy, R. C. Bolling, and C. S. Belsterling for United States Steel Products Company.

William Clifford for W. F. Boardman Company, George H. Tay Company, and W. W. Montague Company.

L. R. Bishop for Somers & Company; Scott, Magner & Miller; Whittier Coburn Company; Roth-Blum Packing Company; and Girvin & Eyre.

G. J. Bradley for Merchants & Manufacturers Traffic Association of Sacramento.

A. P. Matthew, E. W. Camp, A. S. Halstead, F. H. Wood, F. B. Austin, and C. W. Durbrow for defendants.

¹ The proceeding also embraces complaints in—No. 7280 (Sub-No. 1), San Francisco Chamber of Commerce v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 7280 (Sub-No. 2), United States Steel Products Company v. Southern Pacific Company; No. 7280 (Sub-No. 3), Same v. Atchison, Topeka & Santa Fe Railway Company; No. 7280 (Sub-No. 4), Same v. Western Pacific Railway Company; No. 7280 (Sub-No. 5), Somers & Company et al. v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 7280 (Sub-No. 6), George H. Tay Company v. Same; No. 7280 (Sub-No. 7), W. W. Montague v. Southern Pacific Company; No. 7280 (Sub-No. 8), San Francisco Chamber of Commerce v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 7370, Wood Curtis Company v. Southern Pacific Company; No. 7370 (Sub-No. 1), Reno Mercantile Company v. Same; No. 7370 (Sub-No. 2), H. C. Heidtmann v. Same; No. 7370 (Sub-No. 3), A. Lane & Company v. Same; No. 7370 (Sub-No. 4), E. L. Drappo v. Same; No. 7370 (Sub-No. 5), Buffalo Bottling Company v. Same; and No. 7370 (Sub-No. 6), Frank Brothers v. Same.

REPORT OF THE COMMISSION.

MEYER, *Commissioner*:

These cases involve switching charges which accrued prior to August 12, 1914, on interstate carload shipments received or delivered at complainants' plants situated on private or industrial sidetracks within the switching limits of Los Angeles, San Francisco, San Diego, Sacramento, San Jose, Crockett, and Alvarado, Cal., and Reno, Nev. By complaints filed between September 16, 1914, and December 4, 1914, it is alleged that such charges were unreasonable, unjustly discriminatory, and unlawful. Reparation is asked.

The amount of the charge which complainants seek to recover is \$2.50 per car with certain unimportant exceptions. Other similar complaints are pending but have not been heard. The instant cases are in the nature of test cases in which it is sought to establish the general principles involved. In *Associated Jobbers of Los Angeles v. A., T. & S. F. Ry. Co.*, 18 I. C. C., 310, decided April 5, 1910, and *Pacific Coast Jobbers & Mfrs. Asso. v. S. P. Co.*, 18 I. C. C., 333, decided April 11, 1910, known as the *Pacific Coast Switching cases*, we held that a charge of \$2.50 per car for delivering or receiving interstate carload freight on industrial spurs or sidetracks within the switching limits of Los Angeles and San Francisco when that service was incidental to a system line haul was unlawful. A like charge in conjunction with a foreign line haul was found not to be unlawful.

It was shown in those cases that the industrial tracks were an essential part of the carriers' terminal facilities; that no charge in addition to the line-haul rate was made for a like service by other carriers or by defendants at other points; that the receipt and delivery of carload freight on industrial tracks was not an additional or supplemental service but was a substitute for a substantially similar and no more expensive service performed by defendants without charge on their team tracks; that it relieved the carriers' team tracks and sheds, provided them with relatively inexpensive terminal facilities, promoted the speedy release of equipment, attached the business of the industry to the carriers, and enabled them to handle a volume of traffic which was greater than their facilities, exclusive of industrial tracks, could freely, adequately, and economically accommodate.

Defendants were ordered to discontinue the making of any charge for such service in addition to the line-haul rate on or before July 1, 1910. The effective date of the Commission's order was extended from time to time until August 1, 1911. On July 20, 1911, the order was set aside by the Commerce Court. On June 8, 1914, the Su-

preme Court of the United States reversed the order of the Commerce Court and held that the findings of the Commission to which we have referred, being conclusions of fact based upon evidence, were not open to review, and that in prohibiting the unlawful charge the Commission had not transcended its authority. On July 6, 1914, the Commission ordered the defendants to file tariffs, eliminating any charge in addition to the line-haul rate for the receipt and delivery of carload freight on industrial sidings at Los Angeles and San Francisco, when such traffic moved incidentally to a system line haul. Tariffs filed in conformity with this order became effective on August 12, 1914. Thereafter defendants herein filed tariffs which became effective on or before April 1, 1915, and provided: (1) For withdrawing any charge in addition to the line-haul rate for receiving or delivering carload freight on industrial tracks at all other points on their lines when such receipts or deliveries were incidental to a system line haul; (2) for absorbing foreign lines' switching charges on competitive carload traffic received or delivered on industrial tracks served by such foreign lines; and (3) for absorbing switching charges on all carload traffic received or delivered on industrial tracks served by the belt railway at San Francisco.

The Southern Pacific Company, Atchison, Topeka & Santa Fe Railway, and Western Pacific Railway, the only defendants from which reparation is claimed in these proceedings, were granted authority by the Commission to refund all such charges on shipments moving after August 12, 1914, the date upon which switching charges on system line hauled traffic were eliminated at Los Angeles and San Francisco. Defendants' present rates, regulations, or practices, therefore, are not in issue, and the only question to be determined is whether reparation should be awarded on shipments which moved prior to August 12, 1914. Certain of complainants ask reparation on all shipments made since July, 1908, or approximately from the date complaints were filed in the *Pacific Coast Switching cases*; others on shipments made since July 1, 1910, the effective date named in our original orders in those cases; and still others have included only the shipments which moved within two years prior to the filing of their complaints.

The Southern Pacific Company, Atchison, Topeka & Santa Fe Railway, and San Pedro, Los Angeles & Salt Lake Railroad were the only defendants in the *Pacific Coast Switching cases*. They, together with several other carriers, are defendants herein. Since we have held that these three defendants may add nothing to the line-haul rate for the receipt or delivery of carload freight on industrial sidings within the switching limits of Los Angeles and San Francisco in connection with system line hauls, complainants contend that switch-

ing charges which accrued prior to August 12, 1914, for services performed by said defendants on industrial tracks at Los Angeles and San Francisco, or by any defendant herein at any point under substantially similar circumstances and conditions, were necessarily unlawful. Relying upon the soundness of this premise complainants endeavored to show that the service performed by defendants on industrial sidings at all points and by the belt railway at San Francisco was a mere substitute for team-track receipts or deliveries, for which latter service defendants were fully compensated by the line-haul rate, and that they had suffered damage in amounts equal to the switching charges which they were required to pay. Defendants urge that our orders in the *Pacific Coast Switching cases* were not of general application, but applied only to services performed on industrial tracks at Los Angeles and San Francisco by the carriers defendant in those cases and under the particular conditions there existing. They assert that aside from commercial and competitive considerations the circumstances and conditions existing at other points and on the lines of other carriers defendant herein are essentially different from those upon which our findings were based, that complainants suffered no damage, and that unjust discrimination would result from an award of reparation.

Our report in *Associated Jobbers of Los Angeles v. A., T. & S. F. Ry. Co., supra*, is sufficiently descriptive of the facts disclosed by the present record with respect to the construction and operation of industrial tracks at the points herein involved and the resulting advantages and disadvantages to shippers and carriers. It is probably true, as contended by defendants, that their team-track facilities at certain points are adequate for the receipt and delivery of all carload freight, and that the service performed on industrial sidings, as a general rule, is of greater value to the shipper and expense to the carrier than team-track service, but it is apparent that the receipt or delivery of carload freight on many of the industrial tracks in question entails no greater service or expense than would the receipt or delivery of the same cars on team tracks. Moreover, the additional cost of receiving or delivering carload freight on industrial tracks does not necessarily imply that the service is accessorial for which an addition may be made to the line-haul rate, or that it is other than a mere substitute for team-track receipts and deliveries. If cost of service were a controlling test of whether in a given case an additional service has been performed for which increased compensation may be exacted, it is evident that the terminal charge should vary as between different points in the same switching district, or even as between deliveries at the same point at different

times. The fact that in a switching district all carload freight is not received or delivered at the same point and in the same manner presupposes variations in the cost of service and other minor differences incident to diverse circumstances and operating conditions. We find nothing in the present record to justify the view that the placing of cars on industrial sidings served by defendants is not a substantially similar service to that which they perform on their team tracks, or to impeach the correctness of our conclusion in the *Pacific Coast Switching cases, supra*, and *Car Spotting Charges*, 34 I. C. C., 609, that where this service is merely a substitute for team-track receipt and delivery of carload freight the line-haul rate covers the service for the reason that rates generally in this country have been constructed upon that basis.

The foregoing has reference to services performed by defendants on industrial tracks which form a part of the terminal facilities of the carrier receiving the line haul. Many of complainants' claims are not so limited but include shipments delivered on industrial tracks served by the Southern Pacific Company and the Atchison, Topeka & Santa Fe Railway where the Western Pacific Railway performed the line haul; and also shipments received or delivered on industrial tracks served by the belt railway at San Francisco. The San Francisco Belt Railway is owned and operated by the state of California. It serves a large number of industrial tracks, and also several team tracks which were constructed by certain of defendants on land leased from the state and which constitute a part of their terminal facilities. The record discloses that defendants constructed some of these industrial tracks for complainants upon the same terms as other industrial tracks which are served directly by defendants. The belt railway makes a uniform charge of \$2.50 per car for switching between the interchange tracks with connecting lines and the industrial sidings and team tracks served by it. Defendants paid and absorbed switching charges of the belt railway on team-track shipments, but switching charges on shipments received or delivered on industrial tracks were collected from the shipper by the belt railway and were not absorbed by the carrier receiving the line haul.

In the absence of tariff provisions to the contrary the line-haul rate of a particular carrier includes the receipt or delivery of carload freight only at industries or other points located upon its own rails. The right to impose a reasonable and nondiscriminatory charge in addition to the line-haul rate for terminal services performed by connecting carriers was recognized in the *Pacific Coast Switching cases*, and has been affirmed by numerous decisions of the Commission and the courts; and nothing herein stated should be construed

as holding that under all circumstances and conditions rail carriers are bound to perform a service upon private spur and industrial tracks without charge in addition to the regular transportation or line-haul rate. On the contrary, under a schedule of rates constructed upon that theory a charge in addition to the charge for the line haul may be just and reasonable, and failure to impose such a charge might even be unjustly discriminatory. Our conclusion herein based upon consideration of the entire situation renders unnecessary a definite finding upon complainants' contention that the nonabsorption by defendants of switching charges on shipments received or delivered on industrial tracks served by the belt railway was unjustly discriminatory. It may be stated, furthermore, that complainants failed to submit proper proof of damage resulting from the alleged discrimination.

The record shows that for many years prior to August 12, 1914, a charge in addition to the line-haul rate was assessed for the service of receiving or delivering carload freight on industrial tracks at numerous points on defendants' lines in the states of California, Arizona, and Nevada, including all points herein involved, irrespective of whether the industrial tracks were a part of the terminal facilities of the carrier performing the line haul or of a connecting line. Our files disclose tariff authority for such a charge as early as February, 1907, and statements of record indicate that it has been imposed with more or less uniformity since defendants commenced the operation of their lines within those states. It should be noted therefore that our finding in the *Pacific Coast Switching cases*, subsequently confirmed by the Supreme Court, caused the elimination of a charge which had the sanction of long-established custom in that part of the country and which had long been recognized by shippers and carriers as an element to be considered in the conduct of their business. After the Supreme Court announced its decision defendants withdrew the charge not only at Los Angeles and San Francisco, but at all other points where similar conditions prevailed and sought permission to refund all such charges which accrued subsequently to the date upon which the cancellation of switching charges at Los Angeles and San Francisco became effective. As previously stated, authority so to do was granted. Shippers served by industrial tracks at all points involved have thus been placed upon an equal footing. Prior to August 12, 1914, all were required to pay a charge in addition to the line-haul rate for services performed by defendants on industrial tracks. Since then defendants have performed that service for all without any additional compensation.

When carriers have reduced rates of their own volition or in compliance with our orders it does not necessarily follow that reparation

should be awarded on shipments which moved under the preexisting rates. We have frequently declined to award reparation when, as in the instant cases, the rates reduced have been in effect for long periods and the reduction applied throughout a large territory and affected shippers at many points who were not parties to the proceeding. In view of the general readjustment of terminal charges resulting from our findings in the *Pacific Coast Switching cases*, in which cases reparation was neither asked nor awarded, and upon a full consideration of all the facts of record, we are of the opinion that no reparation should be awarded in these proceedings. An order dismissing the complaints will be entered.

HARLAN, *Commissioner*, concurring:

While unable to give my assent to some of the expressions in this and other recent reports of the Commission touching the service by carriers in spotting cars at store doors on the private tracks of shippers and the relation of that service to the line-haul rate, I concur in the results hereinabove announced so far as reparation is concerned.

After affirming the right of connecting carriers, accepting or making such delivery of shipments at store doors on private tracks, to impose a reasonable and nondiscriminatory charge for the service over and above the transportation rate of the carrier having the line haul, the report of the Commission proceeds with this notable observation (*ante*, pp. 85, 86):

* * * nothing herein stated should be construed as holding that under all circumstances and conditions rail carriers are bound to perform a service upon private spur and industrial tracks without charge in addition to the regular transportation or line-haul rate. On the contrary, under a schedule of rates constructed upon that theory, a charge in addition to the charge for the line haul may be just and reasonable, and failure to impose such a charge might even be unjustly discriminatory.

It has long been my view that a shipper receiving a store-door service upon his private industrial track, either by the line-haul carrier or by a connecting switching line, ought to pay a reasonable charge for it in addition to the transportation rate, and that a carrier failing to impose such a charge in addition to the line-haul rate not only grants an unlawful concession in service to the shipper, but also unjustly discriminates against the shipper who pays the line-haul rate and receives only a team-track service. While the report of the Commission at the point above quoted seems to admit the propriety of separating the line-haul from the spur-track service by imposing a charge for the latter in addition to the line-haul rate, it ignores the unlawful discrimination involved under the present practice of applying the same rate for a team-track service as is exacted for the service of spotting a car at the store door of a shipper.

It is the failure of the Commission to observe and affirmatively to deal with the inequalities attending the present practices of carriers in matters of this nature that has led me to differ from my colleagues in cases bearing upon this and related questions. To say that a store-door service by carriers on a private spur or industrial track is a substitute for the team-track service does not in my view state a real condition, but is a mere phrase that can never be convincing to a shipper who has to bear the expense of hauling his traffic by horse and wagon to and from the team track while his neighbor has the car set by the carrier at his store door upon his private industrial track without any expense to him whatever. In view, however, of my separate report in *Car Spotting Charges*, 34 I. C. C., 609, presently to be filed in conformity with the announcement at the foot of the Commission's report in that case, I need not at this time further discuss these important questions.

87 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 592.
PEACHES FROM MISSOURI POINTS.

Submitted August 2, 1915. Decided December 13, 1915.

Proposed increased rates on peaches in carloads from the Koshkonong-Brandsville district in southern Missouri and northern Arkansas to eastern destinations held justified.

Thomas Bond for respondents.

E. H. Hogueland for protestant.

REPORT OF THE COMMISSION.

HALL, Commissioner:

By the tariffs suspended in this proceeding it is proposed to increase the rates to 31 cities in the eastern states on peaches in carloads from producing points in southern Missouri and northern Arkansas, designated in the tariffs as groups 1 and 2 and known as the Koshkonong district. The only protestant is the Koshkonong-Brandsville Fruit Shippers' Association, a corporation engaged in buying and marketing peaches grown at points between Brandsville and Elberta in southern Missouri on the St. Louis & San Francisco Railroad. Supplements Nos. 39 and 41 to F. A. Leland, agent's, I. C. C. No. 977, filed to become effective February 25, 1915, have been suspended by appropriate orders until December 25, 1915. All rates in this report are stated in cents per 100 pounds.

The present rates are joint commodity rates. The proposed rates are made by combination, on the Mississippi River, of 40 cents from the Koshkonong district to East St. Louis, Ill., plus proportional rates thence to destination. The factors east of the river have recently been increased following our conclusions in *The Five Per Cent Case*, 31 I. C. C., 351, and 32 I. C. C., 325.

The following table shows the present and proposed rates to representative destinations, and the amount of increase:

From groups 1 and 2, known as the Koshkonong district, to—	Present.	Proposed.	Increase.
Hartford, Conn.....	\$1.04	\$1.178	\$0.138
Portland, Me.....	1.04	1.178	.138
Boston, Mass.....	1.04	1.178	.138
Providence, R. I.....	1.04	1.178	.138
Richmond, Va.....	.975	1.245	.27
Newark, N. J.....	.94	1.128	.188
Albany, N. Y.....	.94	1.072	.132
New York, N. Y.....	.94	1.128	.188
Philadelphia, Pa.....	.94	1.128	.188
Scranton, Pa.....	.94	1.128	.188
Harrisburg, Pa.....	.92	1.108	.188
Baltimore, Md.....	.92	1.108	.188
Washington, D. C.....	.92	1.108	.188
Rochester, N. Y.....	.88	.904	.024

Peaches of the same kind and quality as those produced in the Koshkonong district are not grown in great quantities in this general vicinity except at points in southwestern Missouri and northwestern Arkansas, located principally on a line of the St. Louis & San Francisco Railroad extending south from Monett, Mo., in what are designated in the tariffs of that carrier as groups 4 and 5. The present rates from the Koshkonong district are considerably lower than those from groups 4 and 5 to the destinations here involved. The proposed increases are said to be due in part to the fact that peach growers in the latter region complained to respondents that the present adjustment gives an undue preference to their competitors in the Koshkonong district.

Rates from groups 4 and 5 to the east have always been made by combination on East St. Louis. The same is true of rates from the Koshkonong district except as to the 31 destinations here concerned. Respondents state that the discriminations, inconsistencies, and departures from the long-and-short-haul provision of the fourth section resulting from this exception are indefensible.

The joint rates from the Koshkonong district have been in effect for nearly 10 years, but the record affords no clear explanation of their origin. Although they are materially lower than the combination rates based on East St. Louis, the eastern lines receive as their divisions their regularly established proportional rates from that point.

The distances to East St. Louis from groups 4 and 5 are little, if any, greater than those from the Koshkonong district. Under the proposed adjustment the latter will enjoy a uniform differential of 4 cents per 100 pounds under the rates from the former to eastern destinations.

The difficulties experienced in the transportation of peaches are emphasized by respondents. Among these may be mentioned the uncertainties as to the volume of the crop; the relatively large percentage of empty movement of the refrigerator cars used for this traffic; the great weight of such cars as compared with ordinary box cars; and the additional labor incident to the reconsignment which is permitted without additional charge in connection with this transportation.

The protestant has submitted a number of rate comparisons intended to show that the proposed rates are unreasonable. Among these are rates from certain points in Georgia and Alabama. On the other hand, the proposed rates compare favorably with those from a number of other points in those states. Another comparison made by protestants was between the proposed rate of \$1.108 from Koshkonong to Washington, D. C., a distance of 1,082

No. 6160.¹
MINNEAPOLIS THRESHING MACHINE COMPANY
v.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY ET AL.

Submitted April 9, 1915. Decided November 23, 1915.

Complainant manufactures agricultural implements at Hopkins, Minn., and ships them to points in central freight association territory and to Canada. On complaints involving the reasonableness of the rules with respect to minimum carload weights on shipments of separators and other implements to points in Ohio and to Winnipeg, Manitoba; *Held*:

1. That the through charges collected by defendants on shipments of agricultural implements from Hopkins, Minn., to points in central freight association territory were unlawful in that they exceeded the aggregates of the intermediate charges based on Peoria, Ill. Reparation awarded.
2. That the charges collected on a shipment from Minneapolis, Minn., to Winnipeg, Manitoba, which moved in July, 1913, were unreasonable to the extent that they exceeded the charges that would have accrued if the "two for one" rule had been applicable. Reparation awarded.

F. J. Morley and J. A. Hosp for complainant.

A. H. Lossow for Minneapolis, St. Paul & Sault Ste. Marie Railway Company and Canadian Pacific Railway Company.

D. P. Connell for official classification lines.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of traction engines, threshers, and other agricultural implements at Hopkins, Minn. By complaints filed in September, October, and December, 1913, and January, 1914, it alleges that the charges collected by defendants on certain shipments of grain separators and appurtenances shipped during the years 1912 and 1913 from Hopkins to points in Ohio, Kansas, and Nebraska, and from Minneapolis, Minn., to points in Manitoba and Wisconsin, were unreasonable, because of the minimum carload weight requirements applicable. Reparation is

¹ The proceeding also embraces complaints in—No. 6181, Minneapolis Threshing Machine Company *v.* Minneapolis, St. Paul & Sault Ste. Marie Railway Company et al.; No. 6181 (Sub-No. 1), Same *v.* Minneapolis & St. Louis Railroad Company et al.; No. 6181 (Sub-No. 2), Same *v.* Same; No. 6181 (Sub-No. 3) Same *v.* Chicago, St. Paul, Minneapolis & Omaha Railway Company et al.; No. 6181 (Sub-No. 4), Same *v.* Same; No. 6181 (Sub-No. 5), Same *v.* Same.

asked. The level of the rates involved is not assailed. At the hearing complainant requested the dismissal of the complaints in subnumbers 3, 4, and 5 of No. 6181, which involved the shipments to Kansas, Nebraska, and Wisconsin.

The shipments involved in No. 6160 and in No. 6181 (Sub-Nos. 1 and 2) from Hopkins to points in Ohio moved by way of Peoria, Ill. Complainant requested the initial carrier to furnish a 50-foot flat car for each shipment, but two shorter flat cars were furnished in each case for the carrier's convenience. Charges were collected on the basis of the minimum weight applicable to shipments loaded on cars of the length ordered. Shipments from Hopkins to points in Ohio are governed by the official classification, which rates agricultural implements in carloads fifth class. Separators and threshers, with or without power, minimum weight 20,000 pounds, subject to rule 27, take the same rate. Rule 27 provides that when a shipper orders a car over 36.5 feet in length for articles subject to rule 27 and the car ordered can not be furnished within six days, the carrier, after the expiration of such period, may furnish two smaller cars, charging therefor no less than the minimum weight fixed for the car ordered. The delivering carriers state that the provision of rule 27 relative to the six-day wait was not complied with; that two cars were furnished for one by the initial carrier within six days of the several orders for one car and that they are entitled to collect undercharges. But this provision is made for the carriers' benefit, can be waived, and was waived by the initial carrier.

Complainant contends that its separators, or threshers, are properly described as light and bulky articles, and that not more than two separators, aggregating about 24,000 pounds, can be loaded on a 50-foot car. Rule 27 provides that when the minimum weight specified is 20,000 pounds for shipments loaded in a standard car 36.5 feet long the minimum weight for a car 50 feet long shall be 32,400 pounds. Complainant's statement is quite true of separators, but separators frequently are loaded with traction engines, gas engines, and other agricultural implements, and such shipments readily load to the minimum weights required for cars of any length. More generally complainant objects that shipments from central freight association territory to certain points in western classification territory and between certain points in western territory require a carload minimum of only 20,000 pounds regardless of the length of the car used. However, complainant clearly is not entitled to more favorable minimum weight requirements to central freight association territory than are imposed for shipments entirely within that territory.

One shipment that moved June 4, 1913, from Hopkins to Covington, Ohio, consisted of two plain separators complete with wind stackers, feeders, weighers, and fixtures, aggregating 21,860 pounds actual weight. The charges were based on the minimum weight basis described and a rate of 33.5 cents per 100 pounds, and aggregated \$108.54. Complainant contends that the charges were unreasonable to the extent that they exceeded \$73.24. The shipment was hauled by the carriers 833 miles, and earned 6.5 cents per car-mile on each of the two cars used. On the basis urged by complainant the car-mile earnings would have been 4.4 cents for each car used.

The shipment that moved June 4, 1913, from Hopkins to Wapakoneta, Ohio, weighed 21,956 pounds. Charges were collected on the minimum weight basis described and at a rate of 31 cents in the sum of \$100.44. Complainant contends that the charges should not have exceeded \$68.06. This shipment was hauled 915 miles and earned something less than 5.5 cents per car-mile for each of the two cars used. Rates proposed by complainants would yield less than 3.75 cents per car-mile.

Five shipments moved from Hopkins to Columbus, Ohio, ranging in actual weight from 20,160 pounds to 27,520 pounds. Charges in the sum of \$106.92 were collected on each shipment on the minimum weight basis described and at a rate of 33 cents. These shipments were hauled 875 miles and earned 6.1 cents per car-mile for every car used. The charges which complainant alleges would have been reasonable for these shipments average \$74.31, or 4.25 cents per car-mile for each car used. As the published rate from Hopkins to Columbus was 33.5 cents, these shipments apparently were undercharged one-half cent per 100 pounds. The present rate is 34.4 cents.

The total charges collected on all of these shipments at the published rates would not have been unreasonable if the shipments had moved in the 50-foot cars requested and were not unreasonable as the shipments actually moved. Defendants' rules relative to minimum weights for grain threshers and separators moving from Hopkins, Minn., to points in Ohio are not shown to be unreasonable. The record indicates that they were published for the benefit of shippers like complainant.

Complainant contends further that the through charges collected were unlawful, because they exceeded the aggregates of the intermediate charges based on Chicago or Peoria, Ill. As the shipments all moved through Peoria, only the charges to and from Peoria need be discussed. The joint rates through Peoria do not exceed the aggregates of the rates to and from Peoria. The discrepancy assailed results from the different rules and minimum weights applicable in

western trunk line and in central freight association territories for particular shipments loaded upon cars of certain lengths. Grain separators shipped from Hopkins to Peoria take a minimum of 20,000 pounds per car regardless of the length of the car; grain separators shipped from Peoria to points in Ohio graded minima ranging from 20,000 pounds for car 36.5 feet long or less to 40,000 pounds for car 50.5 feet long. For 50-foot cars the minimum is 32,400 pounds, which is also the minimum for through shipments from Hopkins to points in Ohio in 50-foot cars. Columbus is a fairly illustrative point of destination. The rates were 20 cents per 100 pounds from Hopkins to Peoria, 16.5 cents from Peoria to Columbus, 33.5 cents from Hopkins through Peoria to Columbus. Complainant's shipments to Columbus ranged from 20,160 pounds to 27,520 pounds. The through charges on such shipments at a minimum of 32,400 pounds per 50-foot car would amount to \$108.54, while the charges to and from Peoria would total \$93.78 for the lightest shipment, \$108.50 for the heaviest. The through charges on a shipment weighing 27,540 pounds would just equal the sum of the intermediate charges. On shipments weighing more than 27,540 pounds the through charges would be less than the sum of the intermediate charges, but on shipments weighing less than 27,540 pounds would exceed the sum of such intermediate charges. The similarly critical weights for similar shipments to the other points involved were 29,970 pounds to Covington and 25,920 pounds to Wapakoneta. The critical weights vary, of course, with the size of the car used and with the gateway, except that the through charges for shipments in cars 36.5 feet long always are less than the sums of the intermediate charges.

Tariff rules that produce such results in their application are clearly improper, and we find that the through charges paid by complainant on its shipments from Hopkins to Ohio points by way of Peoria, which exceeded the intermediate charges based on Peoria, were unlawful and that complainant is entitled to reparation to that extent, with interest. Neither the 20,000-pound minimum nor the 32,400-pound minimum applicable to cars 50 feet long, loaded as the tariff provides, is shown to be unreasonable, and we shall expect the carriers to correct the tariffs without specific order.

We further find that complainant made the shipments involved as described and paid and bore charges thereon herein found to have been unlawful, that it has been damaged to the extent that the charges paid exceeded the aggregates of the intermediate charges based on Peoria and that it is entitled to reparation as follows: \$16.22, with interest from June 17, 1913, on the shipment moved

June 4, 1913, from Hopkins to Covington; \$7.93, with interest from June 30, 1913, on the shipment moved June 4, 1913, from Hopkins to Wapakoneta; \$42.12, with interest from August 15, 1913, on the five shipments moved in June, 1913, from Hopkins to Columbus. Orders will be entered accordingly. The complaints in Sub-Nos. 3, 4, and 5 of No. 6181 will be dismissed.

A single shipment remains to be considered, consisting of one separator with wind stacker, feeder, weigher, and fixtures, and one gas engine and plow, aggregating 33,600 pounds. On June 28, 1913, complainant requested the initial carrier to furnish a 50-foot flat car for the shipment. The initial carrier was unable to furnish a 50-foot car and furnished two shorter cars instead. One of the cars furnished was shorter than the other. Complainant loaded 22,200 pounds into the smaller car, 2,200 pounds over the 20,000-pound minimum required, and used the larger car, which was 40 feet long, for the remaining 11,400 pounds. The shipment moved from Minneapolis July 2, 1913, over the Minneapolis, St. Paul & Sault Ste. Marie and Canadian Pacific railways, consigned to Winnipeg, Manitoba. Total charges in the sum of \$157.08 were collected at the point of origin, pursuant to the tariffs then in force, at the joint rate of 34 cents per 100 pounds, on the basis of the actual weight in the first car and the minimum carload weight of 24,000 pounds applicable to the larger car.

Complainant contends that it is impossible to load its separators on 50-foot cars to the minimum of 34,000 pounds required; that defendants' rule, in effect when this shipment moved, excluding flat cars of all sizes from the "two for one" rule, was unreasonable and that the charges collected were unjust and unreasonable to the extent that they exceeded \$114.24, the charges that would have accrued if the rate charged had been assessed on the basis of the actual weight of the whole shipment. Reparation is asked in the sum of \$42.84.

Complainant's separators can not be loaded to the minimums specified for the various lengths of flat cars in use, but apparently can be when mixed with other agricultural implements. The mixture involved weighed only 400 pounds less than the 34,000-pound minimum required for the 50-foot car ordered by complainant. We find, however, that defendants' rules excluding shipments loaded on flat cars from the "two for one" rule were unreasonable, as defendants apparently recognized when they published a rule effective October 1, 1914, permitting shipments of the kind involved in two cars, with a minimum weight of 35,000 pounds. We accordingly find, further, that the total charges collected on this shipment were unreasonable to the extent that they exceeded the charges that would have accrued

if the "two for one" rule had been applicable, on the basis of the minimum weight required for the car ordered. We also find that complainant made the shipment as described, and paid and bore the charges thereon; that it was damaged to the extent of the difference between the charges collected and the charges herein found reasonable; and that it is entitled to reparation in the sum of \$41.48, with interest from August 1, 1913. An appropriate order will be entered, but no order will be entered for the future, because defendants' present "two for one" rule is not in issue.

No. 6737.

J. H. CRISWELL

v.

WICHITA FALLS & NORTHWESTERN RAILWAY COMPANY ET AL.

Submitted June 27, 1914. Decided November 2, 1915.

Complainant desired to ship cattle from Gate, Okla., a station on the Wichita Falls & Northwestern Railway, to Kansas City, Mo. Through the negligence of that carrier's agent at Gate in permitting previous shipments of infected cattle, made by another shipper, to be handled through the stock pens at Gate, thereby making it unsafe for complainant to ship through those pens, complainant drove his cattle to Laverne, Okla., for shipment. Laverne also is a station on the Wichita Falls & Northwestern Railway, but a higher rate applied from Laverne than from Gate. Complaint dismissed.

J. H. Criswell for complainant in person.

C. L. Fontaine for Wichita Falls & Northwestern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a rancher living in Beaver County, Okla. By complaint, filed March 17, 1914, he asks reparation on account of damages sustained in connection with a shipment of six carloads of cattle from Laverne, Okla., to Kansas City, Mo.

The case was submitted at first upon an agreed statement of facts substantially as follows:

In December, 1913, complainant had pastured six carloads of cattle in the vicinity of Gate, Okla., which he desired to ship to
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Kansas City. Upon notifying the agent of the Wichita Falls & Northwestern Railway at Gate of his desire, by ordering the necessary cars, he was informed by the agent that certain carload shipments of cattle a few days before had been allowed to pass through the carrier's stock pens at Gate; that the carrier's agent had not secured from the shipper a government certificate to the effect that the cattle were free from disease; that later the cattle were found upon inspection to be afflicted with an infectious disease; that the pens used had not yet been cleaned and disinfected, and that if complainant desired to use the pens for his cattle he must assume the risk. Rather than ship from Gate under these conditions complainant drove his cattle to Laverne and shipped them to Kansas City from that point. The rates to Kansas City were 22½ cents per 100 pounds from Gate, and 26½ cents from Laverne. Gate and Laverne both are local points on the Wichita Falls & Northwestern Railway. Complainant's claim for reparation is based upon the difference in the rate from the two stations.

Defendant Wichita Falls & Northwestern Railway concedes that its agent at Gate erred in accepting the previous consignment of cattle without first securing a government certificate of their soundness, and that the agent's negligence was responsible for complainant's inability to ship from Gate. Subsequently a hearing was had, but no additional facts were developed. Complainant did, however, expressly disavow any attack upon the reasonableness of the rate from Laverne.

The Commission is empowered to award reparation only for violations of the act to regulate commerce. No violation of the act can be predicated upon the particular facts in this case, and the complaint therefore must be dismissed.

87. I. C. C.

No. 7558.¹

**CALIFORNIA PORTLAND CEMENT COMPANY,
INCORPORATED,**

v.

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY COM-
PANY ET AL.**

Submitted March 24, 1915. Decided November 23, 1915.

Rates charged by defendants for the transportation of wire bag ties from Waukegan and Chicago, Ill., and Toledo, Ohio, to Colton, Cal., not found to have been unreasonable. Complaint dismissed.

Fred L. Gibson for complainant.

E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.

Geo. C. Squires for Southern Pacific Company and Union Pacific Railroad Company.

R. C. Fyfe for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of cement, with headquarters at Los Angeles, Cal. By complaints filed December 7, 1914, and January 23, 1915, it alleges that the rates charged by defendants for the transportation of certain less-than-carload shipments of wire bag ties from Waukegan and Chicago, Ill., and Toledo, Ohio, to Colton, Cal., were unreasonable. Reparation is asked and the establishment of reasonable rates for the future.

Some of the shipments consisted of thin iron wires 8½ inches long, welded together at the ends, to form bands. Others consisted of thin iron wires 6 inches long, twisted and flattened at the ends. The wires are used to tie the tops of cement bags. The shipments from Chicago moved in April and June, 1913; the shipments from Toledo, in June and July, 1914. Charges were collected at the second-class rates of \$2.95 and \$3.03 per 100 pounds, respectively. The shipments from Waukegan moved during the period from November, 1912, to June, 1914, and were charged for at the second-class rate of \$2.95 per 100 pounds on the shipments that moved prior to February, 1913, and at the second-class rate of \$2.95 per 100 pounds, or at the first-

¹ This proceeding also embraces complaint in No. 7558 (Sub-No. 1), Same *v.* the New York Central Railroad Company et al.

class rate of \$3.40 per 100 pounds, or at one and one-half times first-class rate, \$5.10 per 100 pounds, on the shipments that moved subsequently to February 1, 1913. The dates of delivery are not of record. Some of the shipments may be barred.

Shipments from and to the points of origin and destination involved are governed by the western classification. Prior to February 14, 1913, there was no specific rating on wire bag ties in the western classification. The rating applicable to the shipments that moved prior to that time was the first-class rating provided for "wire goods, n. o. s.," flat or nested, boxed. On February 14, 1913, wire bag ties, in barrels or boxes, were rated second class, which rating, together with the second-class rates of \$3.03 from Toledo and \$2.95 from Chicago and Waukegan, is still in effect. The shipments from Waukegan on which the first-class rate was charged were packed in crates, while those on which one and one-half times the first-class rate was charged were packed in containers other than boxes or crates, rule 8 of the western classification providing as follows:

Section 1.—Unless otherwise provided for in the classification, all freight shipped in crates, bales, bags, or bundles, will take, when shipped in crates, the next class higher (greater) than in boxes, and when shipped in bales, bags, or bundles, one class higher (greater) than in crates, etc.

Complainant contends that the rates charged were unreasonable to the extent that they exceeded a combination rate of \$1.51 per 100 pounds, composed of a rate of \$1.30 to California terminals and the fourth-class rate of 21 cents from California terminals back to Colton, applicable to other wire articles, principally shingle bands, in less than carloads. Effective November 15, 1914, wire bag ties in carloads were included in the list of articles taking \$1.30 rate. Subsequently to the hearing August 15, 1915, the rate of \$1.30 on shingle bands, wire bag ties, and other articles enumerated in the item as taking that rate was canceled, leaving no less-than-carload commodity rates in effect on these commodities. The cancellation of the less-than-carload commodity rate of \$1.30 conformed to our decision in *Commodity Rates to Pacific Coast Terminals*, 32 I. C. C., 611. The fourth-class rate to Colton from Toledo is \$2.15 and from Chicago and Waukegan, \$2.07.

Defendants show that the \$1.30 rate on shingle bands and other articles cited by complainant applied also from eastern points, and testified that it was established to meet water competition and was abnormally low. Defendants also show that wire bag ties, some of which are patented articles, are of considerably greater value and lower specific density than the articles named by complainant as taking the \$1.30 rate to California terminals when the shipments

involved moved, and than various articles of hardware which under the heading "hardware, n. o. s., in barrels, boxes, bundles or crates" are rated second-class in the western classification.

We find that the rates assailed are not shown to have been unreasonable, and an order dismissing the complaints will be entered accordingly.



No. 7071.

WILLIAM HENRY WATTAM ET AL.

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted February 2, 1915. Decided November 23, 1915.

Refrigeration charges on a carload of bananas shipped from Galveston, Tex., to Livingston, Mont., not found to have been unreasonable. Complaint dismissed.

Lee Zumwalt for complainants.

Robert Dunlap, T. J. Norton, F. E. Andrews, P. G. Safford, J. H. Barwise, and C. P. Dowlin for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are William Henry Wattam and John Samuel Wattam, copartners, engaged in buying and selling fruits at Denton, Tex., under the firm name of W. H. Wattam & Son. By complaint filed June 29, 1914, they allege that the charge collected by defendants for the partial refrigeration of a carload of bananas shipped from Galveston, Tex., to Livingston, Mont., was unreasonable. Reparation is asked and the establishment of a reasonable charge for the future. The claim was presented to the Commission informally July 10, 1912.

The shipment weighed 21,100 pounds and moved June 17, 1912, over the Gulf, Colorado & Santa Fe, Fort Worth & Denver City, Colorado & Southern, Chicago, Burlington & Quincy, and Northern Pacific railways. The freight charges assessed are not in issue. The shipment was iced as the messengers in charge of the car directed.

No ice was placed in the car at Galveston. Four tons of ice were supplied at Alvin, Tex., by the Gulf, Colorado & Santa Fe, two tons at Alliance, Nebr., by the Chicago, Burlington & Quincy, and two tons at Laurel, Mont., by the Northern Pacific. Refrigeration charges appear to have been collected in the sum of \$80. As the legal rate was \$80 per car of 20,000 pounds, excess in proportion, the shipment was undercharged \$4.40.

The tariff providing refrigeration charges contained the following rule:

When shipments are moved without ice from originating points and are subsequently placed under refrigeration at any point en route, the full refrigeration rates from originating points as shown herein to final destination shall apply.

When the shipment moved, refrigeration charges on shipments of bananas forwarded from New Orleans, La., were based on the tariff rates for the ice supplied as directed by the messenger in charge of the car. Effective February 24, 1913, the refrigeration tariff applicable from Galveston was amended to provide for the application of the basis in effect from New Orleans. Prior to October, 1913, the movement of bananas from Galveston over the Gulf, Colorado & Santa Fe Railway was light, but since that time the movement has been heavy and in trainloads.

Complainant contends that the charges collected were unreasonable because the charges imposed by other roads were based on the amount of ice actually used and because defendants later amended their tariff to apply this basis from Galveston. Defendants show that the cost of refrigeration on perishable shipments forwarded from Galveston to Livingston is \$81.75. No evidence was adduced that would justify an exception relative to bananas. The voluntary reduction of defendants' rate to meet carrier competition does not establish that the previous rate was unreasonable.

We find upon all of the facts disclosed that the refrigeration charges assailed are not shown to have been unreasonable, and the complaint will be dismissed.

INVESTIGATION AND SUSPENSION DOCKET No. 613.
NEW YORK-JERSEY CITY FERRY RATES.

Submitted November 10, 1915. Decided December 18, 1915.

Proposed increased rates for the ferriage of vehicles and animals between the Erie Railroad's terminals at Jersey City, N. J., and Twenty-third street and Chambers street, New York City, not justified. Tariff ordered canceled.

H. A. Taylor and *T. H. Burgess* for respondent.

Robert Carey and *John Bentley* for Jersey City interests.

R. D. Rynder for Swift & Company.

J. C. Lincoln for Merchants Association of New York.

C. G. Bond for Motor Truck Club of America.

Philip Croxton for P. Lorillard Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

The Erie Railroad Company, hereinafter referred to as respondent, by its tariff I. C. C. No. 12720, filed to become effective March 25, 1915, but suspended by us to July 23, 1915, and subsequently to January 23, 1916, proposes to increase certain local rates on vehicles and animals moved on the ferries owned and operated by it between Jersey City, N. J., and Twenty-third street and Chambers street, New York City. The rates in issue will be explained more in detail a little later. No passenger fares of any kind or rates in connection with respondent's rail line are involved. Protestants are the mayor and aldermen and the Chamber of Commerce of Jersey City; the Team Owners' Association of Hudson county, N. J., an organization of manufacturers, merchants, truckmen, and vehicle owners, who use these ferries; and independent shippers and truckmen.

Respondent's rail line has an eastern terminus in Jersey City on the west bank of the Hudson River. The distances via the ferry routes are approximately 1 mile from Jersey City to Twenty-third street and 2 miles to Chambers street. All vehicles using the ferries, including those that carry mail and express, pay the ferry rates. Respondent operates no vehicles across the ferries except hand trucks for baggage, and on these it does not appear that any ferry charge is assessed. Freight moving by rail to and from New York is ordinarily lightered without additional charge. This service, however, is separate and distinct from the ferry operation. On certain commodities, on account of their perishable nature or which for other

reasons can not safely be lightered, an allowance is made by respondent for ferriage in lieu of lighterage. If such freight is carried over respondent's ferries the vehicles transporting it pay the regular ferry charges. But few passenger vehicles use the ferries.

At present respondent owns nine ferryboats, eight of which are in operation. The majority of them have been in use since 1895, but four have been built since that date at a cost of more than \$200,000 each. Of those now operated, four are of single-deck and four of double-deck construction. Their main decks are similarly arranged as to space. Through the center of each, lengthwise, is a double alleyway for vehicles which occupies somewhat less than one-half of the total space of the deck. The remainder of the space is devoted principally to passenger traffic.

The ferry lines operate on regular schedules, making connections with passenger trains arriving at or departing from respondent's rail terminal at Jersey City. Prior to 1910 respondent's passenger traffic to and from New York was transported across the river only by the ferries, but since the completion of the Hudson & Manhattan Railroad under the Hudson River, which railroad will hereinafter be referred to as the Hudson tubes, a part of this traffic has been diverted to that route. Passengers using the ferries may be considered in two general classes; local passengers, and those traveling on through tickets in connection with respondent's rail line. The local passengers are required to pay a regular ferry charge of 3 cents per trip. A through passenger ticket to or from New York includes the ferry charge, but if a passenger uses the Hudson tubes instead of the ferry he must pay its charge of 5 cents per trip.

At the outset we are met with the question of whether or not we have jurisdiction over the rates in issue. Respondent contends that we have no jurisdiction, because only local traffic between New York City and Jersey City is involved. For many years prior to 1913 respondent filed tariffs with us covering its charges for transportation via its ferries, but on January 23, 1913, it discontinued that practice. Counsel states that this was because of certain court decisions, hereinafter referred to, on which respondent now in part relies in support of its contention as to the jurisdictional question raised. Effective February 1, 1915, increased rates, the same as those involved here, were made effective, but not filed with us. Evidently doubting its position as to our jurisdiction, respondent, on February 21, 1915, canceled the rates made effective on February 1, 1915, and filed them with us, to become effective March 25, 1915, in the tariff here under suspension. It appears, therefore, that from February 1 to February 21, 1915, rates the same as those here under suspension were collected. Since February 21, 1915, the tariff naming the present rates has been on file with us.

We think that the decision of the Supreme Court of the United States in *New York Central Railroad v. Hudson County*, 227 U. S., 248, establishes our jurisdiction over the transportation here involved. In that case the authorities of Hudson county, N. J., attempted to fix certain rates for the transportation of local passengers on the ferries of the New York Central & Hudson River Railroad between Weehawken, N. J., and New York City. The railroad company urged that the ordinances passed were unconstitutional because they were an interference with interstate commerce and therefore exceeded the power of the state authorities. The supreme court of New Jersey sustained the contentions of the railroad company, but the court of errors and appeals reversed the judgment of the supreme court. The case was brought to the Supreme Court of the United States on writ of error and the decision of the court of errors and appeals was reversed. In the course of its opinion the Supreme Court of the United States said:

It is equally clear that the contention of the defendant in error as to the absence of all power in Congress over interstate ferries is merely academic. From this it necessarily arises that the only ground relied upon to sustain the judgment below is the ruling in the *Gloucester Ferry Case*, and the further proposition that there has been no action of Congress over the subject of the ferriage here involved which authorizes the holding that state power no longer obtains. As, therefore, the claim on the one side of an all-embracing and exclusive federal power may be, temporarily at least, put out of view and the assertion on the other of an absolutely exclusive state power may also be eliminated from consideration because not relied upon or because it is both demonstrated and admitted to be without foundation, it follows that to dispose of the case we are called upon only, following the ruling in the *Gloucester Ferry Case*, to determine the single and simple question whether there has been such action by Congress as to destroy the presumption as to the existence in the state of vicarious and revocable authority over the subject. We say simple question because its decision is, we think, free from difficulty, in view of the express provision of the first section of the act to regulate commerce (act of February 4, 1887, c. 104, 24 Stat., 379) subjecting railroads as therein defined to the authority of Congress, and expressly declaring that "the term railroad as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease * * *." The inclusion of railroad ferries within the text is so certain and so direct as to require nothing but a consideration of the text itself. Indeed, this inevitable conclusion is not disputed in the argument for the defendant in error, but it is insisted that as the text only embraces railroad ferries and the ordinances were expressly decided by the court below only to apply to persons other than railroad passengers, therefore the action by Congress does not extend to the subject embraced by the ordinances. But as all the business of the ferries between the two states was interstate commerce within the power of Congress to control and subject in any event to regulation by the state as long only as no action was taken by Congress, the result of the action by Congress leaves the subject, that is, the interstate commerce carried on by means of the ferries, free from control by the state. We think the argument by

which it is sought to limit the operation of the act of Congress to certain elements only of the interstate commerce embraced in the business of ferriage from state to state is wanting in merit. In the absence of an express exclusion of some of the elements of interstate commerce entering into the ferriage, the assertion of power on the part of Congress must be treated as being coterminous with the authority over the subject as to which the purpose of Congress to take control was manifested. Indeed, this conclusion is inevitable since the assumption of a purpose on the part of Congress to divide its authority over the elements of interstate commerce intermingled in the movement of the regulated interstate ferriage would be to render the national authority inefficacious by the confusion and conflict which would result.

The respondent, however, urges that even if the ferries are subject to our jurisdiction the act does not require vehicular ferry rates not made in connection with a rail line to be filed with the Commission; that the only traffic of the ferries subject to such regulation is that conducted in connection with the railroad operation; that local ferry service is not transportation within the meaning of the act; and that it was not the intent of Congress to extend the obligation of the railroads with respect to ferries, but merely to bring the ferries under the act and control of the Commission in so far as they were operated in connection with the railroad traffic. Substantially the same contentions were urged in the case just quoted from, and we are of the opinion that they were there decided, and are, therefore, no longer open questions. It necessarily follows that the rates, fares, rules, and regulations of the ferries must be filed with us as required by section 6 of the act, and are subject to our jurisdiction.

The present rates are based on the character of the vehicle, without any uniform provision for apportioning the charges according to its length and without reference, except in a few instances, to its weight. What might be termed a minimum charge under the present tariff is 13 cents per trip. Under the proposed rates a minimum charge of 25 cents per trip is provided for a vehicle, load and horses, if any, up to 2,000 pounds in weight and up to 11 feet for the length of the vehicle and load, and an additional charge of 5 cents for each additional 2,000 pounds, or fraction thereof, in weight, and also an additional charge of 5 cents for each 2 feet, or fraction thereof, in length over 11 feet of vehicle and load. The weight of the horse or horses, if any, and of the driver is taken into consideration in figuring the weight charge, but in figuring the length charge only the length of the vehicle and load is considered.

The following are typical examples: Under the present tariff a two-horse truck which with its load is 18 feet 6 inches long and of 18,500 pounds aggregate weight is charged 87 cents. Under the proposed rates the charge would be 65 cents. At the present basis a self-propelled truck which with its load does not exceed 11 feet in length.

or 8 feet in width, is ferried for 35 cents. Under the proposed rates, a self-propelled truck weighing with load not over 2,000 pounds, and not exceeding 11 feet in length, would be ferried for 25 cents, but 5 cents would be added to the charge for each additional 2,000 pounds, or fraction thereof, and 5 cents for each additional 2 feet, or fraction thereof, in length over 11 feet. Under the present tariff the rate for a passenger vehicle drawn by two horses and containing three persons is 25 cents regardless of the size of the vehicle. Under the proposed rates the charges are based upon the seating capacity of the vehicle, the charge for a carriage drawn by two horses and having a seating capacity for driver and not over six persons being 35 cents. The proposed rates for animals not harnessed to vehicles are materially higher than the present rates. The rate for horses and mules is increased from 6 cents to 10 cents, and that for cattle from 9 cents to 10 cents. While the movement of such animals is relatively small, no specific evidence was offered to justify these increases.

Using one day's business as representative, respondent ascertained that the increase in revenue from the proposed rates would be \$324.81 per working day, an increase of approximately 57 per cent. The total increase in revenue for the working year on this basis would therefore amount to more than \$100,000. To certain users of the ferries this increase would be more than 57 per cent, as is clearly demonstrated from the following table, which was filed as an exhibit:

Kind of vehicle.	Present rates.			Proposed rates.			Percentage of increase.
	Light.	Loaded.	Round trip.	Light.	Loaded.	Round trip.	
One-horse wagon not exceeding 11 feet in length.....	\$0.13	\$0.13	\$0.26	\$0.30	\$0.40	\$0.70	169.2
Two-horse trucks not exceeding 14 feet in length, average 13 feet 6 inches.....	.25	.37	.62	.55	.65	1.20	92.5
Two-horse truck exceeding 14 feet in length, average 14 feet 6 inches.....	.30	.50	.80	.55	.70	1.25	56.2
Three-horse truck 16 feet in length.....	.35	.56	.91	.70	1.00	1.70	86.8

The above table is based upon actual records of the loads transported for one protestant in a period of 60 days, and on the actual weight of the wagons of the different classes and the horses and harness. The weight of the driver is estimated. The percentage of increase is figured on the increase in the round-trip movement, as the vehicles usually move in one direction loaded and in the other direction light. This protestant's business is handled principally in two-horse and three-horse trucks.

For justification of these proposed increases, respondent relies principally upon two propositions: (1) The change from the present basis should be allowed in order to place the ferry charges upon a

more equitable basis in their relation to the different classes of vehicles and with reference to the value of the service to their owners; (2) the increased rates should be allowed in order to enable respondent to secure additional revenue from the ferry service and a reasonable return on the investment therein.

Respondent urges that those who use the ferries should pay according to the value of the service which they receive, and that both the weight and length of the vehicles transported should be considered as pertinent factors in making up ferry rates; that the present rates were never equitably adjusted and in the past 10 years there has been a gradual but material change in the character of the vehicles and in the weight of their loads; that the capacity of ferryboats is measured largely by deck space, and although the newer boats are of increased size, the increase in the size of the vehicles transported has been relatively greater, the result being that the number of vehicles which the boats can carry has decreased. Coal, for example, was formerly hauled in wagonloads of from 1 to 3 tons, but now most of the coal wagons contain 5 to 7 tons each. Ten years ago numerous one-horse milk wagons were carried, but now milk is transferred, in certain instances, in trucks weighing 38,000 to 40,000 pounds loaded. The increased weight of the loaded vehicles has necessitated the installation of steam-power capstans on the boats to assist the horse-drawn vehicles in getting on or off. It appears, however, that these capstans are used principally to assist loaded trucks off the ferries at low tide.

To show that its revenue from its ferry service is at present insufficient to provide a reasonable return on the investment therein, respondent introduced an exhibit purporting to show in detail the results of the ferry operations for the years 1908 to 1914, inclusive, a summary of which is here presented:

	1908	1909	1910	1911	1912	1913	1914
Operating revenue:							
Passenger.....	\$377,654.48	\$349,109.10	\$363,837.76	\$340,773.28	\$347,691.37	\$358,530.34	\$343,335.75
Vehicle and livestock	171,064.74	166,658.02	176,375.04	184,240.75	211,090.14	208,258.62	216,402.71
Other.....	4,716.66	3,806.82	1,894.42	1,652.40	832.20	1,082.18	1,872.20
Total.....	553,435.88	519,573.94	542,107.22	526,666.43	559,613.71	567,871.14	570,540.66
Operating expenses.....	681,764.77	494,422.06	492,376.13	499,056.96	494,256.70	510,004.47	508,624.28
Net revenue.....	128,338.89	48,211.58	49,731.09	27,609.47	65,356.91	57,866.67	70,006.38
Taxes.....	7,117.59	6,981.96	7,306.96	7,190.34	7,899.37	7,626.46	7,599.94
Operating income.....	135,456.48	41,229.62	42,424.13	20,419.13	57,457.54	50,240.21	62,406.44
Rent, property at Jersey City.....	21,838.54	21,438.98	21,839.98	21,271.02	21,271.02	21,271.02	21,271.02
Interest on investment..	69,419.31	84,225.00	83,475.01	79,725.07	79,725.00	79,761.26	79,761.26
Total deductions.....	91,257.85	105,663.98	105,315.00	100,996.09	100,996.02	101,032.28	101,032.28
Deficit.....	226,714.77	64,434.36	62,890.87	79,576.96	43,538.48	50,791.07	38,625.84

¹ Deficit.

The salient feature of this exhibit is that it shows a deficit for each year. Omitting the year 1908, which the record shows was abnormal, owing to unusual expense caused by rebuilding equipment, the deficit ranges from \$80,576.88 in 1911 to \$37,956.83 in 1914. Under transportation expenses items of depreciation on the ferryboats are included for the respective years in the following amounts: 1908, \$43,491.60; 1909, \$36,525.24; 1910, \$35,064.24; 1911, \$32,437.12; 1912, \$31,212.61; 1913, \$29,964.10; 1914, \$28,789.72. Respondent asserts that the above statement makes no allowance for interest on \$312,529.45 which it has expended for improvements on property leased for ferry purposes or for working funds or investments in material or supplies. As a number of the items in the statement are vigorously contested by protestants, it will be appropriate to consider certain of them in detail.

It will be noted that the major portion of the ferry revenue is derived from passenger traffic. This is largely made up of arbitrary apportionments of revenue from the sale of through tickets by respondent's rail line which apply between New York and Jersey City via the ferries. There are many varieties of these tickets, which are sold at different prices. They include tickets for long distance transportation as well as for short distance commutation travel. The latter is the principal passenger business of the ferries. However, only two bases of apportionment to ferry revenue are used, 1.6 cents per ride for 60-trip commutation tickets and 2.5 cents per ride for all others. Neither the origin of, nor the reason for, this apportionment is known. Respondent admits that it has never made a study to ascertain the cost of transporting passengers via its ferries, but one of its witnesses suggested that at one time 10 ferry tickets or rides were sold for 25 cents, or 2.5 cents per ride, and that probably this is the basis for this apportionment.

Protestants urge that the passenger traffic is not bearing its proper share of the operating cost of the ferries. An exhibit is introduced to show that certain bridge companies in the middle west demand and receive their full local rates out of joint passenger fares with rail lines. They further assert that upon the basis of space occupied on the ferries the vehicular traffic now pays more than its fair share of the ferry expenses.

Respondent contends that the amount shown as passenger revenue is too large because it is made up on the basis of the number of railroad tickets sold, which is not a correct statement of the number of passengers using the ferries, as many of them prefer to use the Hudson tubes. The number of eastbound passengers using the ferries is unknown, but it is assumed by respondent to be the same as the number of westbound passengers presenting tickets, which has been deter-

mined. From this estimate, it contends that the passenger revenue now apportioned to the ferry operation is greater than would be yielded by apportioning 3 cents for every passenger using the ferries. It appears, however, that baggage is not carried through the Hudson tubes. The ferries would, therefore, have to transport the baggage of a passenger having a ticket via the ferries even though the passenger moved via the Hudson tubes. Respondent further represents that the allowance to the ferries from revenues derived from commutation tickets is more than would be yielded by a mileage prorate.

The major portion of the space in the boats is occupied by passenger facilities, and it appears that expensive fittings, furnishings, safety equipment, etc., are provided for the passenger traffic. The service has been improved both in speed and regularity, largely due to the demands of the passenger traffic. It appears that the local passenger traffic of the ferries is declining on account of the increased use of the Hudson tubes. For traffic reasons respondent contributed \$250,000 toward the construction of the waiting rooms and connections with its terminal in Jersey City for use of its passengers who travel via the Hudson tubes. It appears that more than 45 per cent of respondent's passenger ferry traffic has been diverted to the Hudson tubes. It also appears that in addition to investing this \$250,000 respondent guaranteed the Hudson tubes at least 3,500,000 passengers a year from Jersey City, but it is asserted that this contract was never enforced. It is not fair to assume that the rates on vehicular traffic should be sufficiently high to pay returns on investment in passenger facilities no longer demanded or occupied. A witness for respondent admitted that the apportionment of passenger revenues to the ferries was not proper and that the local passenger fares should be increased, but it was his opinion that they probably could not be higher than at present because of competition with the Hudson tubes.

Protestants also make specific attack on the inclusion in the statement of the entire rent paid to the city of New York for the Twenty-third street ferry terminal, because it is devoted to purposes other than ferry business. They state that a general ticket office for respondent's rail line is maintained there, also baggage rooms, telegraph and telephone offices, and that space is allotted for certain express privileges. Only 25 per cent of the rent paid for the Chambers street property is charged to the ferries, and this is also criticized by protestants. Their principal objection, however, is that respondent receives \$16,800 per year from a news company for concessions on these two ferry properties, which is not credited to the ferry operations. Respondent admits that there is ground for this objection, but urges on brief that this amount is paid not only for space occupied on the

ferry properties, but includes certain sums for privileges not connected with such operation. The amount that should be deducted, however, does not appear.

In arriving at the showing of a deficit respondent deducts from the net revenue of the ferry operations 6 per cent per annum as interest on the inventory value of the five boats taken over in 1895 and on the original cost of the four new boats built since that time, which value totals \$1,329,354.24. This is done notwithstanding the fact that their depreciated value on respondent's books June 30, 1914, was \$779,452.87, or \$549,901.37 less than the cost on which return on the investment is figured. This was criticized by protestants, because respondent has, since 1907, included in its operating expense account each year depreciation at the rate of 4 per cent per annum, in the amounts already stated. From 1895 to July 1, 1907, the depreciation does not appear to have been carried on the books of the company, but respondent made an inventory of the boats in 1907 for depreciation purposes. The exact amount charged off during the period from 1895 to 1907 does not clearly appear, nor does it appear whether it was charged off in a lump sum or in a certain amount each year. Protestants urge that the return on the investment should be based upon the depreciated value of the boats rather than on the original cost or inventory value, and that if this is done the interest item in 1914 would be reduced \$32,994.08, and the alleged deficit correspondingly reduced to \$4,962.75 because of this item alone. Respondent, however, insists that interest should be figured on the original cost. It argues that in order to maintain a going business when the original investment is not being decreased by retirement of capital, interest on the entire investment must be earned in addition to an amount sufficient for the proper purpose of a depreciation fund in order to yield a proper return. Following our decision in *Lum v. G. N. Ry. Co.*, 33 I. C. C., 541, we are of the opinion that the accrued depreciation should be deducted from the original cost or inventory value of the property for the purpose of arriving at a proper basis for a return. In the case just cited we said:

No hard and fast rule has yet been established for determining for all roads the fair value of the property. There may be instances where no depreciation should be deducted from the cost of the property, but in the three cases before us there is no doubt that the depreciation actually accrued must be deducted. In the five years ending in 1912, for example, the Allouez Bay Dock Company charged \$978,396.34 to operating expenses on account of dock depreciation. The Commission is asked to take into consideration the resulting operating expense so increased in fixing an ore rate and at the same time to allow a return on the cost now of these docks. This can not be conceded.

An item carried as rent of property in Jersey City is also criticized by protestants. In 1914 this item amounted to \$21,271.02, approxi-

37 I. C. C.

mately the same as has been charged to this account since 1908. It is based on 6 per cent of the property in Jersey City said to be devoted to ferry purposes. No depreciation on this property appears to have been charged off, although some of the structures have been in use for many years.

Certain other objections have been made to items included in the statement, but we do not think it necessary to refer to them in detail. It is apparent from the discussion so far had that respondent's method of assigning passenger revenue from through fares to ferry operations is arbitrary, and that there is merit in many of the other criticisms made by protestants. It follows, therefore, that this statement is of little value in determining whether or not the vehicular traffic on the ferries is contributing its proper share toward the general expense of the ferries or to respondent's system operations.

It does not appear that the proposed rates have been made on any basis other than that they are intended to equitably distribute the charges among the different types of vehicles and to secure additional revenue. The desire for additional revenues seems to have been the principal point considered in making the new rates. A witness for respondent who had charge of preparing the tariff here under suspension stated that he was told that the ferries were losing upward of \$60,000 a year and that increased rates were necessary in order to make up this deficit. Respondent states that the proposed charge of 5 cents for each increase in length of vehicle and load of 2 feet or fraction thereof, over 11 feet, is practically at the same rate as the minimum charge of 25 cents for 11 feet, urges that this is about as near to this basis as could be secured in round figures, and says that it is a decided convenience to both patron and ferryman to deal in multiples of five. This, of course, is assuming that the proposed minimum of 25 cents is reasonable, notwithstanding the fact that the present minimum of 18 cents is approximately the same as that charged by other ferry companies operating between Jersey City and New York. It also appears from an exhibit introduced by protestants that respondent's present rates on this vehicular traffic are approximately the same as, and in many instances higher than, those of other ferry companies operating between these points. The Pennsylvania Railroad Company and the New York Central Railroad Company operate such ferries. Witnesses for these companies appeared on behalf of respondent and in the course of their testimony presented statements to show that their own ferries were operating at a loss. Neither of these witnesses was fully advised as to the figures which he presented, and both admitted that they had been prepared by some one else. It appears that the greater portion of the Pennsylvania ferry passenger traffic has been diverted to the

Hudson tubes and that the trains that operate through the Hudson tubes run a certain distance over the tracks of the Pennsylvania Railroad, which company receives revenue from the Hudson tubes for this trackage. It further appears that the Hudson tubes now carry practically all the Pennsylvania Railroad's passengers from Jersey City except those destined to the Pennsylvania's principal rail terminal in New York City.

Protestants call our attention to an admission made by respondent at a hearing on its application under the Panama Canal act, in which it is seeking authority to continue the ownership and operation of these ferries. At that hearing respondent admitted that its annual report to the Commission for the year ended June 30, 1913, shows that the operation of its ferries resulted in a profit of \$61,094. The statement introduced in the case at bar shows that for the same period the ferries were operated at a deficit of \$52,202.06. Respondent now asserts that its annual report in which the profit of \$61,094 appears did not include the following items, which are included in the statement introduced in this case: Salaries, \$4,637.68; taxes, \$7,626.40; rent, \$21,271.02; interest on investment, \$79,761.25.

Respondent urges that this vehicular traffic is an outside service which it is under no obligation to perform; that it is therefore justified in getting what it can out of such service to help bear the expense of the ferries; and that this is peculiarly a case where the value of the service to the parties using the ferries justifies an increase in the charges. We can not accept this view. All rates subject to the act, no matter for what service performed, must be just and reasonable; and in this case the burden is on respondent to justify the proposed rates.

While we do not wish to be understood as condemning the theory on which the proposed rates are based, we are of the opinion that such an increase in rates as is here proposed is not necessary in order to remove any inequalities that may now exist. The present rates are approximately the same as, and in many instances higher than, those of other ferry companies operating between these points under similar circumstances and conditions, and from the facts and circumstances of record we are of the opinion, and find, that respondent has not justified the rates here under suspension.

An order will be entered requiring the cancellation of the suspended tariff.

1915 WESTERN RATE ADVANCE CASE—PART II
INVESTIGATION AND SUSPENSION DOCKET No. 606.
RATE INCREASES IN WESTERN CLASSIFICATION
TERRITORY.

Submitted November 19, 1915. Decided December 18, 1915.

1. Proposed increased carload rates on agricultural implements justified except to points in Louisiana, and to those points not justified.
2. Proposed increased carload rates on canned goods in western trunk line territory justified.
3. Proposed increased carload rates on flue lining in western trunk line territory justified.
4. Proposed increased carload rates on eggs from points in Kansas and other points to southwestern points not justified.
5. Proposed increased carload rates on cider and vinegar from interstate points to Kansas and Missouri not justified.
6. Proposed increased carload rates on bauxite ore to certain points justified and to certain other points not justified.
7. Proposed increased carload rates on boots and shoes, leather, and boot and shoe findings between Missouri manufacturing points and interstate points justified; proposed less-than-carload rates between same points and increases in carload minima not justified.
8. Proposed increased rates on dried and evaporated fruits in portions of western trunk line territory justified.
9. Proposed readjustment of rates to Louisiana not justified.
10. Proposed increased carload rates on furniture from Kansas City and other points to Oklahoma groups 6, 7, and 8 justified; proposed increase to Oklahoma group 9 not justified.
11. Proposed increased less-than-carload rates to and from manufacturing points in Missouri on various commodities found unlawful when made to vary with quantity shipped; other proposed increases justified.
12. Proposed charges for switching "run-by and setback" grain justified.
13. Proposed transit charges on fruits and vegetables in western trunk line and trans-Missouri territory justified.
14. Proposed increases upon miscellaneous items justified; others not justified.

C. C. Wright, T. J. Norton, C. S. Burg, W. F. Dickinson, A. P. Humburg, R. B. Scott, O. W. Dynes, W. T. Hughes, Thomas Bond, Henry G. Herbel, and J. M. Souby for all respondents.

R. B. Scott and W. G. Wagner for Chicago, Burlington & Quincy Railroad Company.

W. F. Dickinson for Chicago, Rock Island & Pacific Railway Company.

O. W. Dynes for Chicago, Milwaukee & St. Paul Railway Company.

F. G. Wright for Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company and receiver thereof.

F. S. Hollands for Chicago Great Western Railroad Company.

W. H. H. Cash for Hillsboro & North Eastern Railway Company.

F. A. Leland for Southwestern Tariff Committee.

A. P. Humburg for Illinois Central Railroad Company.

J. W. Allen for Missouri, Kansas & Texas Railway Company.

R. C. Hobbs for Kansas City & Memphis Railway Company.

G. H. Hamilton for Kansas City Southern Railway Company.

L. T. Wilcox for Union Pacific Railroad Company.

J. H. Henderson for Iowa Board of Railroad Commissioners and Iowa protestants.

A. D. Beals for Iowa Board of Railroad Commissioners.

A. E. Helm for Public Utilities Commission for the State of Kansas.

A. L. Flinn for Minnesota Railroad & Warehouse Commission.

P. W. Dougherty, Oliver E. Sweet, and E. J. McVann for South Dakota Board of Railroad Commissioners.

E. J. McVann, E. W. McCullough, and W. J. Evans for National Implement & Vehicle Association; National Federation of Retail Implement Dealers Associations; Wisconsin Implement Dealers Association; Western Retail Implement, Vehicle & Hardware Association; Illinois Implement & Vehicle Dealers Association; Colorado Retail Hardware & Implement Association; Minnesota Retail Implement Dealers Association; Iowa Implement Dealers Association; Mid-West Implement Dealers Association; South Dakota Implement Dealers Association; and Texas Hardware & Implement Association.

S. D. Snow and F. B. Montgomery for International Harvester Company of America.

W. M. Cave for Parlin & Orendorff Company.

William E. Lamb and C. R. Hillyer for Cudahy Packing Company, Sefton Manufacturing Company, American Milling Company, and live poultry shippers.

R. D. Rynder for Swift & Company.

L. F. Berry and Martin Van Persyn for Wholesale Grocers' Exchange of Chicago.

T. A. McGrath for Minneapolis Civic and Commerce Association.

W. D. Wells for W. S. Dickey Clay Manufacturing Company.

C. S. Bather for Federation of Furniture and Fixture Manufacturers and Rockford Manufacturers' and Shippers' Association.

Frank L. Moe for Evens & Howard Fire Brick Company.

L. M. Wallace, Jesse McDonald, and Arnold Just for Laclede-Christy Clay Products Company.

B. D. Lamont for Rock Island Plow Company.

L. S. Prince for M. Rumely Company.

J. S. Custer for Moline Plow Company.

Jacob Kanter for Avery Company.

F. S. Pool for Deere & Webber Company and the Twin City Implement, Vehicle & Hardware Club.

L. R. Martin for Oliver Chilled Plow Works.

J. H. Miller for Emerson-Brantingham Farm Implement Company.

A. R. Ebi for Deere & Company.

J. W. Grabiel for A. C. Hamilton & Company; Ladd Brothers; Simpson-Mintun Company; Appleby Brothers; Kimmons, Walker & Company; Benton County Produce Company; and A. S. Teasdale.

O. L. Gregory, C. B. Ellis, and C. E. Cotterill for Ozark Cider & Vinegar Company.

S. W. Campbell for National Shoe Wholesalers' Association and National Boot and Shoe Manufacturers' Association.

R. D. Sangster for Monarch Vinegar Works.

E. P. Smith and C. D. Sturtevant for Omaha Grain Exchange.

J. E. Robinson for Albert Miller & Company.

G. L. Filer for G. M. H. Wagner & Sons.

H. C. Lust for A. Priesmeyer Shoe Co.

Jeffery & Campbell for Norton Company; Republic Mining and Manufacturing Company; Franklin H. Kalbfleisch Company; Laclede-Christy Clay Products Company; American Bauxite Company; Aluminum Ore Company; Aluminum Company of America; City of Columbus, Ohio; Superior Chemical Company; and Globe Bauxite Company.

REPORT OF THE COMMISSION.

DANIELS, Commissioner:

Many of the schedules suspended in this proceeding propose increases in carload rates on various commodities, while others propose increases in less-than-carload rates on some commodities, and still others propose charges for special transportation services, such as switching incident to storage in transit, for which no charge is now made. The general region in which the increases and additional charges are proposed is the same as that involved in Investigation and Suspension Docket No. 555, 35 I. C. C., 497, hereinafter referred to as the *Western Rate Advance Case*. While some of the increases are proposed as part of the general increases proposed in the *Western Rate Advance Case*, others are proposed, as respondents claim, for the sole purpose of removing discrimination, and still others for the purpose of correcting mistakes in tariffs. Those

increases here proposed which were intended as a part of the general increase proposed by the tariffs suspended in the *Western Rate Advance Case* and also the proposed charges for special transportation services, were placed in this docket for investigation rather than in the *Western Rate Advance Case*, for the reason, as stated in the report in that case, that the effort was made to constitute that investigation "one of the propriety of increased rates which the carriers seek to impose upon a relatively small number of articles of heavy movement in the territory affected." The testimony heard in that proceeding relating to the financial needs of the carriers was made a part of the record in this case. That testimony was carefully analyzed and discussed in the *Western Rate Advance Case* and will, therefore, not be again discussed here, but it has been carefully considered as a part of the justification offered by the respondents for the increases here proposed.

The principal commodities here involved are agricultural implements, canned goods, flue lining, eggs, cider and vinegar, bauxite ore, boot and shoe materials, and dried and evaporated fruits. Increases in rates on other commodities are proposed, as to which no protests were made, and as to others of which, though protests were filed, no protestant appeared at the hearing and these schedules can be disposed of without much discussion. The special transportation services as to which testimony was heard are the switching of cars of grain which have been rejected upon inspection, referred to in the record as "run-by and setback switching of grain," and the switching and accounting incident to the storage of apples, potatoes, onions, and celery in transit, charges being proposed for these services where none are now made. The protestants are individual shippers and associations of shippers, and the various state commissions of the states primarily affected.

The schedules will be considered in the order in which we have named them.

AGRICULTURAL IMPLEMENTS.

The increases proposed in rates on agricultural implements are, in general, 2 cents per 100 pounds, with class A rates as a maximum. The term "agricultural implements" is used to include not only farm implements other than hand implements, but various other articles and their parts which enter into the mixture allowed in carload shipments of agricultural implements. Among the articles included are wagons, sleighs, carriages and their parts, gasoline engines, windmills, feed mills, and binder twine. The territory covered is between Chicago, Peoria, St. Louis, St. Paul, Mississippi River points, and points taking same rates, and points in Iowa, Missouri, Minnesota, North Dakota, South Dakota, Missouri River

points, and points in Kansas and Nebraska; and also between Chicago, Peoria, St. Louis, Mississippi River points, and points taking same rates, and St. Paul, Duluth, La Crosse, Winona, and points in Wisconsin, northern Michigan, and Minnesota. Protestants as to the schedules we are now considering are the International Harvester Company and other manufacturers, the National Implement & Vehicle Association and other associations of shippers, various individual dealers, and the railroad and public utilities commissions of the various states in the territory involved.

In the western classification agricultural implements are rated class A, but for many years they have generally moved in the territory involved under commodity rates, in many instances 2 cents per 100 pounds below class A rates, and the proposed increases are intended to bring such rates up to or toward the level of class A, which is the maximum. In some cases the proposed increase is less than 2 cents for the reason that the difference between the existing commodity rate and class A is now less than 2 cents, while in other cases the proposed rate is less than class A, the difference in such cases between the existing commodity rate and class A being more than 2 cents. In some cases in which such a difference of more than 2 cents exists, the carriers propose to bring up the rates to the class A basis. In 1875 the Missouri legislature prescribed a rate of \$45 per car on agricultural implements between St. Louis and Kansas City, or the equivalent of a rate of 22½ cents per 100 pounds, the minimum being 20,000 pounds. This rate the respondents applied also to interstate shipments. The rates from Chicago to the Missouri River were for a long time thereafter continued on the class A basis, but are now, and for many years have been, differentially adjusted with respect to those from St. Louis 7½ cents higher, making the Chicago rate 30 cents. From Peoria the rates were made the usual differentials under Chicago, and from other points differentials over or under according to location. The rate as fixed by the state of Missouri to points on the Missouri River was 2 cents less than the class rate, and that rate was the basis of rates beyond to points in Nebraska and Kansas. It is claimed by respondents that the action of the Missouri legislature was in the interest of settlers, and that the reasons which induced the establishment of the rate on such a low basis no longer exist.

The rate from Chicago to St. Paul is 5 cents less than the class A rate. The respondents say that rate is controlled by through rates carried under the official classification from manufacturing points in Ohio, Michigan, Indiana, and western Pennsylvania. These through rates were established by the northern gateways through Mackinac and afterwards applied via Chicago. The St.

Paul rate by various routes is carried through as far down as northern Iowa. The rates to these intermediate points are made with relation to the St. Paul rate. If the proposed rates are approved, the rates to St. Paul and to intermediate points will range from 3 cents below class A up to class A. With the exception of those rates and the rates to a few other points, to all of which an increase of 2 cents is proposed, the rates on agricultural implements in western territory will be on the class A basis. The minimum weight for agricultural implements in western classification is 24,000 pounds, but the minimum weight, both under the present tariffs and the proposed tariffs, is 20,000 pounds.

Effective in 1913, after several years of litigation, the Missouri state-made rates were reduced, and at the time of the hearing there was in general a spread of $5\frac{1}{2}$ cents between those rates and the interstate rates between the Mississippi and the Missouri rivers, and the proposed increase of 2 cents would increase that spread to $7\frac{1}{2}$ cents. At the time of the hearing applications by the respondents were pending before the Missouri commission for an increase of the Missouri state rates, and the respondents stated that it was their purpose to file similar applications with the Iowa commission, if the proposed rates should be approved by this Commission. The state made rates and the interstate rates between the rivers in Iowa are now the same. The percentage of increase in the proposed rates on agricultural implements ranges from 1.92 per cent to 11.11 per cent. The respondents state that the proposed increase is a part of the general increase proposed by them in the *Western Rate Advance Case*, and that they selected agricultural implements to bear a part of that increase because they believed upon investigation that the commodities in the agricultural implement list were not bearing their proper share of the costs of transportation, and ought not to pay less than class A rates. Class A rates are in general higher than fifth-class rates in western trunk line territory. There was formerly no fifth class in western classification, but that class was added later to take care of the heavier commodities then included in class A, in which class were left the lighter and bulkier of those heavy commodities which are rated fifth class in official classification. An exhibit filed by respondents shows that the weight per cubic foot of agricultural implements as they are loaded in cars for shipment, averages approximately $11\frac{1}{2}$ pounds per cubic foot, the weight of articles of machinery from 20 to 26 pounds, and the weight of articles of iron, excluding pig iron, 41 pounds. The protestants question the accuracy of these figures and insist that only weighted averages would be of value for comparison. Agricultural implements and machinery jointly constitute over 75 per cent of the articles in

class A, both as to number and weight, machinery constituting a larger percentage than agricultural implements.

Agricultural implements are made largely of iron and steel, many of them being 70 per cent of metal. Iron and steel articles are rated fifth class in western classification. The list of agricultural implements is now much more comprehensive than it was when the present rates were originally established, and such implements are now more largely made of iron and steel than they were then. The mixture allowed is unusually liberal, and is probably the most comprehensive mixture authorized in the western trunk line territory. This mixture is provided for by western trunk line circular 1-L, and is more liberal than that provided for in the western classification. The articles included in the mixture take various ratings, some of them being rated as high as second class. The machinery mixture allowed is also a liberal one, but is less so than the implement mixture. In the machinery list there are practically no commodity ratings.

The respondents insist that no reason exists why rates on agricultural implements should not be on the class A basis, and that every reason for applying that basis of rates upon machinery applies equally to agricultural implements. In answer to this contention protestants say, and ask us to find, that the great bulk of the implement movement is upon commodity rates and not upon class A rates. Protestants also ask us to find:

(a) That the implement traffic loads reasonably heavy per car; (b) is shown not to be a hazardous business; (c) pays higher revenue per gross and per net ton-mile than other articles properly comparable; (d) moves in large volume with reasonable regularity in opposite direction to heavy movement of other commodities; and (e) has every characteristic that entitles it to commodity, rather than class rating in the territory in controversy.

Respondents have offered exhibits comparing rates on machinery in the general territory here involved with the proposed rates on agricultural implements, and showing the revenue per car, the revenue per car-mile, revenue per gross ton-mile, and the revenue per net ton-mile from such rates on machinery and on iron and steel articles as compared with the revenue on the same basis from the proposed rates on agricultural implements. By "gross ton-mile revenue," as that term is used in the record, is meant the revenue per ton-mile based upon the entire weight hauled, including the weight of the car, estimated at 18 tons. Iron and steel articles are divided into different lettered groups, some of the groups used for comparison in the exhibits being groups A, C, G, H, and I. Group A includes angle iron, bar iron, sheet iron, plow beams, plow points, plowshares, etc. Group C includes a much smaller number of articles, but most of these articles are included also in group A. Group G includes iron

pipe and iron poles. Group H includes iron pipe connections, couplings and fittings, and a few other articles, while group I includes pig iron alone. The minimum weights vary. With a few exceptions, the minimum weight for group A and group C is 36,000 pounds; for group G and group H, 46,000 pounds; and for group I, 49,280 pounds. From the exhibits referred to a table has been compiled, which shows, in addition to the information referred to, the class A rate and the revenue therefrom in connection with each of the rates on agricultural implements, and the fifth-class rate and the revenue from that rate in connection with each of the rates on iron and steel articles. That table, designated as Table No. 1, follows.

87 I. C. C.

TABLE NO. 1.

From Chicago, Ill. to—	Distance.	Average loading.	Rate.	Revenue.			
				Per car.	Per car-mile.	Per gross ton-mile.	Per net ton-mile.
	Miles.	Pounds.	Cents.	Amount.	Cents.	Mills.	Mills.
Cedar Rapids, Iowa:							
Agricultural implements—							
Present	219	28,000	20	\$56.00	26.57	7.99	18.26
Proposed		28,000	21	58.80	26.85	8.39	19.18
Class A		28,000	21	58.80	26.85	8.39	19.18
Machinery		36,200	21	76.02	34.71	9.61	19.18
Iron and steel articles—							
A		54,200	14	76.88	34.65	7.08	12.79
G-H		52,000	14	72.80	33.24	7.55	12.79
I		70,600	200	63.04	28.79	8.40	8.16
Fifth class		36,000	18	64.80	29.59	8.23	16.44
Stout Falls, S. Dak.:							
Agricultural implements—							
Present	547	28,000	31	86.80	15.87	4.96	11.33
Proposed		28,000	32½	93.80	17.15	5.36	12.26
Class A		28,000	32½	93.80	17.15	5.36	12.26
Machinery		36,200	32½	121.27	22.17	6.14	12.26
Iron and steel articles—							
C		54,200	26	151.76	27.74	6.15	16.24
G-H		52,000	19	98.80	18.06	4.19	6.09
I		70,600	273	117.57	21.49	4.03	6.23
Fifth class		36,000	26	100.80	18.43	5.13	10.34
Hastings, Nebr.:							
Agricultural implements—							
Present	628	28,000	54	151.20	24.08	7.58	17.20
Proposed		28,000	56	156.80	24.97	7.80	17.53
Class A		28,000	56	156.80	24.97	7.80	17.53
Machinery		36,200	56	202.72	32.26	8.94	17.53
Iron and steel articles—							
C		54,200	49	205.88	42.29	9.38	18.61
G-H		52,000	40½	210.60	33.54	7.62	12.90
Fifth class		36,000	49	176.40	28.09	7.89	15.61
Wichita, Kans.:							
Agricultural implements—							
Present	667	28,000	51	162.80	21.41	6.89	15.29
Proposed		28,000	53	168.40	22.26	6.95	15.89
Class A		28,000	53½	168.80	24.56	7.67	17.54
Machinery		36,200	53½	211.77	31.78	8.89	17.54

The points of destination selected for this table are fairly representative of all the points of destination involved. The average loading of agricultural implements, as shown in the table and in the exhibits from which it is taken, is 28,000 pounds, but the evidence for protestants shows the actual average loading to be 26,800 pounds. The rates are shown from Chicago only, but the subjoined table, designated as Table No. 2, also taken from the exhibits, shows how the earnings on agricultural implements under the proposed rates and the earnings on machinery from Chicago to the points of destination named in the above table compare with the earnings from St. Louis to the same points.

TABLE NO. 2.

To—	From—	Distance.	Agricultural implements.			
			Proposed rate.	Earnings per car-mile, in cents.	Earnings per gross ton-mile, in mills.	Earnings per net ton-mile, in mills.
		<i>Miles.</i>				
Cedar Rapids, Iowa.....	Chicago.....	219	21	26.85	8.39	19.18
Do.....	St. Louis.....	306	22	20.13	8.29	14.28
Sioux Falls, S. Dak.....	Chicago.....	547	33½	17.15	5.36	12.26
Do.....	St. Louis.....	570	33½	16.46	5.15	11.75
Hastings, Nebr.....	Chicago.....	628	56	24.97	7.80	17.88
Do.....	St. Louis.....	552	48½	24.00	7.69	17.57
Wichita, Kans.....	Chicago.....	667	53	22.25	6.95	15.89
Do.....	St. Louis.....	479	45½	26.00	8.31	19.09
Missouri River.....	Chicago.....	1 500	32	17.92	5.00	12.89
Do.....	St. Louis.....	1 325	24½	21.11	6.00	15.08
St. Paul, Minn.....	Chicago.....	398	22	15.48	4.84	11.08
Do.....	St. Louis.....	574	26	12.08	3.96	9.08
Springfield, Mo.....	Chicago.....	523	32	17.13	5.36	12.24
Do.....	St. Louis.....	239	22	25.77	8.06	18.41

To—	From—	Distance.	Machinery.			
			Proposed rate.	Earnings per car-mile, in cents.	Earnings per gross ton-mile, in mills.	Earnings per net ton-mile, in mills.
		<i>Miles.</i>				
Cedar Rapids, Iowa.....	Chicago.....	219	21	34.71	9.61	19.18
Do.....	St. Louis.....	306	24	28.39	7.86	15.69
Sioux Falls, S. Dak.....	Chicago.....	547	33½	22.17	6.14	12.26
Do.....	St. Louis.....	570	33½	21.28	5.89	11.75
Hastings, Nebr.....	Chicago.....	628	56	32.28	8.94	17.63
Do.....	St. Louis.....	552	48½	31.81	8.81	17.57
Wichita, Kans.....	Chicago.....	667	58½	31.75	8.80	17.54
Do.....	St. Louis.....	479	51	36.54	10.08	21.29
Missouri River.....	Chicago.....	1 500	32	23.17	6.42	12.89
Do.....	St. Louis.....	1 325	24½	27.28	7.56	15.08
St. Paul, Minn.....	Chicago.....	398	25	22.74	6.20	12.86
Do.....	St. Louis.....	574	26	16.40	4.54	9.08
Springfield, Mo.....	Chicago.....	523	35½	24.57	6.81	13.88
Do.....	St. Louis.....	239	26	42.41	11.74	26.48

¹ Average distance.

The proposed increase from St. Louis is 2 cents to each destination named in the table except Sioux Falls and St. Paul. To Sioux Falls the proposed increase is 2½ cents and to St. Paul there is no increase, the present rate being the same as class A.

The value per ton placed upon agricultural implements in table No. 1 was taken from an exhibit filed by respondents containing a list of agricultural implements and purporting to give the value of each implement with the average value per ton of the entire list. The protestants objected to that list upon the ground that it was not representative, and the respondents thereupon filed a supplemental list in which the average value per ton was shown as \$201 instead of \$146.90, as shown in the original exhibit. To this list also the protestants objected, and pointed out specific errors in the values given. Both of these lists were taken from price lists and other information which had been furnished by manufacturers to the carriers or to the Uniform Classification Committee from time to time prior to the hearing. The protestants did not offer to furnish a list of their own.

In the case of a mixture made up of articles varying so widely in kind and value as those included in the agricultural implement mixture it would be practically impossible for the carriers to have such information as to weighted average value as would enable them to weigh with nicety the value of the mixture as a factor in classification.

While the average value per ton of machinery is much greater than the average value per ton of agricultural implements the average loading of machinery is about 40 per cent greater than the average loading of agricultural implements. The average value of iron and steel articles is much less than that of agricultural implements, the average value per ton of iron and steel articles in group C being only about one-fourth the value per ton of agricultural implements. The rates on iron and steel articles, however, seem to be made with but little reference to value, as the articles in groups G and H, although having a much greater average value per ton than the articles in group C, take lower rates than articles in group C.

It will be noted that from Chicago to Missouri River points, an average distance of 500 miles, the proposed rate of 32 cents yields a revenue per car of \$89.60 and a revenue per car-mile of 17.92 cents, as compared with a revenue per car of \$115.84 and revenue per car-mile of 23.17 cents on machinery under a rate of the same amount, the revenue per net ton-mile being 12.80 mills in each case.

On iron articles, group C, from Chicago to the same points the rate is 27 cents, the same as the fifth-class rate, yielding a revenue of \$146.84 per car, 29.27 cents per car-mile, and 10.80 mills per net ton-mile. The average loading of iron articles is much greater than that of agricultural implements, the average loading of Group C being 54,200 pounds.

From St. Louis to Missouri River points, an average distance of 325 miles, the proposed rate of 24.5 cents would yield a revenue per car of \$68.60 and revenue per car-mile of 21.11 cents, as compared

with a revenue per car of \$88.69 and per car-mile of 27.29 cents on machinery, the rate on machinery being the same as on agricultural implements. From St. Louis to Wichita, Kans., a distance of 479 miles, the revenue per car under the proposed rate of 45½ cents would be \$127.40 and the revenue per car-mile 26.60 cents, as compared with \$184.62 per car and 38.54 cents per car-mile under a rate of 51 cents on machinery, while the net ton-mile revenue from the proposed rate would be 19 mills, as compared with 21.29 mills on machinery.

The protestants have introduced as exhibits comparisons of earnings on agricultural implements, with earnings on other commodities, compiled from exhibits introduced by the respondents in the *Western Rate Advance Case*. One of these exhibits purports to represent the gross ton-mile earnings and the net ton-mile earnings of six of the respondents on the various commodities named therein, including agricultural implements and machinery. These earnings are based on actual tonnage moved during several years, but no showing is made as to the average haul of agricultural implements as compared with the average haul of machinery. The territory covered by these comparisons also differs to some extent from the territory here involved. Car-mile earnings and ton-mile earnings are of little value for the purpose of comparing one rate with another unless the length of the haul in each case is shown. As it is conceded by protestants that the rates on machinery are with few exceptions the class A rates, it necessarily follows that in so far as the exhibits in the *Western Rate Advance Case* show higher average earnings on agricultural implements than on machinery, that difference must result either from the fact that in the territory covered by the comparisons made in the *Western Rate Advance Case* which is not covered by the rates here involved the rate adjustment differed to some extent from the adjustment with which we are here dealing, or that the average haul on agricultural implements in the territory covered by the comparisons made in the *Western Rate Advance Case* was shorter than the average haul on machinery in the same territory. If we assume that the hauls were of equal length the rates on agricultural implements must have been higher than the rates on machinery, since it appears from the exhibit that they yielded a higher net ton-mile revenue.

Another exhibit introduced by respondents in the *Western Rate Advance Case*, from which one of the exhibits introduced by protestants is taken, shows earnings of the Chicago, Burlington & Quincy on various commodities, including agricultural implements and machinery. This exhibit shows for the tonnage covered an average haul of 276.1 miles on agricultural implements and an average haul of 333.9 miles on machinery. On agricultural implements the net ton-mile revenue

was 1.807 cents as compared with 1.085 cents on machinery, and the car-mile revenue 19.2 cents on agricultural implements as compared with 18.9 cents on machinery. These figures are for the entire system of the Chicago, Burlington & Quincy and cover a larger territory than that covered by the proposed increases of that line here involved. It will be noted that the average haul of machinery was 20 per cent longer than that of agricultural implements, which would lead us to expect for those hauls a lower revenue per ton-mile and per car-mile on machinery than on agricultural implements. It is clear that the shipments of agricultural implements could not have moved under rates which bore the same relation to the rates under which the machinery moved that the rates on agricultural implements in the territory here involved bear to the rates on machinery in the same territory, unless the difference in the average haul be sufficient to account for the greater net ton-mile revenue on agricultural implements.

The protestants suggest that the objection made to their exhibits taken from the record in the *Western Rate Advance Case* on the ground that they cover territory in addition to that involved in this proceeding would apply equally to the exhibits of respondents to the extent that those exhibits purport to state the average loading of machinery and of iron and steel articles. There is nothing in the record to suggest that the average loading of machinery and of iron and steel articles shown in the exhibits of respondents is not fairly representative of the average loading of those commodities in the territory covered by the suspended schedules which we are now considering, and the mere fact that the average was taken for a larger territory than that covered by the suspended schedule is not sufficient to impair the value of the comparisons made.

The protestants also offer for comparison rates on agricultural implements from Chicago to eastern points, which show that such rates are lower than present rates from Chicago to western points for similar distances, but agricultural implements and machinery are both rated fifth class in official classification, and the general level of rates in that territory is lower than that in the western trunk line territory.

The South Dakota commission which protested on behalf of the farmers of that state introduced an exhibit of actual shipments of agricultural implements, carloads, from points affected by the proposed increases during the calendar year ended December 31, 1914, over representative lines, showing the points of origin, number of cars shipped from each point, the mileage, routing, and weight, and also both the present rate and proposed rate, and the car, car-mile, and ton-mile earnings thereunder.

This exhibit shows that under the proposed rates the car earnings of the Chicago, Milwaukee & St. Paul to Sioux Falls for an average haul of 477 miles would average \$84.11, the car-mile earnings 17.26 cents, and the ton-mile earnings 12.05 mills. This exhibit makes no comparisons of earnings on machinery, but a comparison of these earnings with the earnings on machinery for similar distances shown by respondents' exhibits makes it clear that the proposed rates are reasonable if those rates may fairly be compared with the rates on machinery.

The reasons which protestants urge for low rates on agricultural implements apply with equal force to machinery. One of the reasons most strongly urged against the proposed increase is that agricultural implements move in large volume throughout the year, ordinarily in box-car equipment, in the opposite direction to the heavy movement of grain and grain products, and furnish loading back to the grain fields for cars that would otherwise have to be sent west empty. It appears, however, that machinery also moves in large volume in box-car equipment in the opposite direction to the heavy movement of grain and grain products.

The protestants direct our attention to the fact that shippers of agricultural implements are now required to pay for certain special transportation services for which no charge was formerly made, and insist that the increased revenue to the carriers which results from these added charges as well as the additional burden upon the shippers should be considered in determining whether or not this traffic should be made to bear a still greater part of the burden of transportation. Dunnage which was formerly carried without charge is now included in the weight upon which the freight charges are based, and a charge is now made for the special service incident to storage in transit, whereas no charge was formerly made for that service. It also appears that whereas returned shipments of agricultural implements were formerly carried at reduced rates, such implements now take the full agricultural implement rate.

The carriers are attempting to place agricultural implements as far as possible on the class basis, and as machinery, which is fairly representative of the entire class A list, and moves in greater quantities than the agricultural implement mixture, takes class A rates, no reason appears why the implement mixture should not be placed on the same basis.

The fact that in some cases the proposed rates are less than class A is not sufficient to show that respondents have not in good faith made a reasonable effort to bring all the rates on agricultural implements in the territory involved to the class A basis. A general increase of 2 cents is proposed, with class A as the maximum, and while some of the proposed rates would still be less than class A, the failure to

propose such an increase can not be considered inconsistent with the claim of respondents that their purpose was to restore the rates to the class A basis as far as that could consistently be done. The protestants do not claim that any discrimination would result from the failure further to increase the rate from Chicago to St. Paul and other rates which are more than 2 cents under class A, and as the existing relation of rates is in general proposed to be continued, we can not condemn the proposed adjustment merely because all the rates have not been brought up to class A.

The fact that the present rates have been in effect for many years would, in the absence of any showing as to the reasons for the establishment and maintenance of those rates, be persuasive as to their reasonableness. But the interstate rate from St. Louis to the Missouri River was influenced by the state made rate between those points, and the Chicago rate was later established upon the basis of the usual differential over that rate.

Certain increases are also proposed in the rates on agricultural implements to points in Louisiana, but those increases are considered in a later part of this report.

From the facts of record we are of opinion and find that, excepting the rates to Louisiana points, considered in another part of this report, the proposed rating and increased rates on agricultural implements in carloads have been justified, and the orders of suspension relating thereto will be vacated. We are not to be understood, however, as finding that each individual class A rate or the relationship of each class A rate to other class rates is necessarily reasonable.

CANNED GOODS.

The rates under suspension provide for an increase of 1 cent per 100 pounds upon canned goods in carloads in a large portion of western trunk line territory.

Canned goods move on a fifth-class basis in this territory, except where a commodity rate exists. In the latter case the commodity rate is the same as the fifth-class rate or a little lower. The proposed increases, if granted, will tend to equalize the commodity and class rates where they are not now the same.

Some instances appear in which the proposed increase is more than 1 cent per 100 pounds. This is stated by the carriers to be an error, and that the maximum increase in any case should be 1 cent; also, that the increase should in no case exceed the fifth-class rate.

Exhibits were offered by respondents purporting to show rates in western trunk line territory from representative producing centers to the principal markets therein, setting forth the application of the proposed increases. A comparison was also submitted of the rates which

the Commission found justified in *Merchants Freight Bureau of Little Rock v. W., C. F. & N. Ry. Co.*, 27 I. C. C., 111. This case involved carload rates on canned goods from Iowa producing points to Little Rock and Fort Smith, Ark. The ton-mile earnings for comparable distances are found to be materially higher than the ton-mile earnings afforded by the increases proposed in the instant case. The increase in the cost of the product, if the proposed increases are allowed, is represented to be less than one-half cent upon two dozen cans weighing 2 pounds each.

No evidence is submitted by the protestants in opposition to the proposed increase.

Upon the record, we find that the respondents have justified the proposed increased carload rates upon canned goods, provided such increased rates do not exceed the existing fifth-class rates and do not involve any increase exceeding 1 cent per 100 pounds.

Respondents will be required to cancel any of their proposed rates higher than those found justified herein.

FLUE LINING.

Flue lining in western trunk line territory now takes the same commodity rates as brick. It is proposed to give it the same rates as sewer pipe, which is class E in the western classification. The respondents state that the average increase will amount to about 3 cents per 100 pounds. The proposed change also involves a reduction in the carload minimum from 30,000 pounds to 26,000 pounds.

The principal reasons urged by the respondents in support of the proposed increase are, first, that it will tend to remove the discrimination which now exists in the rates based on the direction of movement of flue lining, inasmuch as this commodity now takes the brick rates upon westbound shipments in western trunk line territory as well as from western trunk line territory into trans-Missouri freight territory whereas the class E sewer-pipe rates generally apply upon the reverse movement; and second, because flue lining is properly classified with sewer pipe and its grouping with brick is improper.

The position of the single protestant against the proposed increase who appeared at the hearing is that flue lining is properly rated upon the brick basis and that the increase proposed is unreasonable.

The discriminatory feature is admitted. This, however, can be removed as effectively by lowering flue lining to the brick basis in trans-Missouri territory as by raising it to the class E basis in western trunk line territory. Little testimony was presented bearing directly upon the reasonableness of the proposed increase. Such exhibits as were offered in connection with flue-lining schedules were furnished

by the respondents and by the intervener for the purpose of proving discrimination. No exhibits were offered by the protestant. Upon analyzing the present and proposed rates, as they appear in these exhibits, to points in Iowa and contiguous states from St. Louis, Peoria, and Chicago on the east, and from points which produce flue lining in the so-called Kansas gas belt on the west, it is seen from the accompanying table that for comparable distances the ton-mile earnings and the rate per 100 pounds are materially less from St. Louis, Peoria, and Chicago at the proposed increased rate than from the western points.

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Comparison of rates and per ton-mile revenue on brick, gas lining, sewer pipe, and class E.

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This continues to give the eastern shipping points the benefit of their natural advantage, while lessening the spread in the rates from those points as compared with those of their western competitors.

The issue in the case is thus reduced to the proper classification of flue lining. The respondents state that this article formerly took the same rates as sewer pipe in western trunk line territory, but subsequently for competitive reasons was put on the brick basis, and that the carriers are now seeking to restore it to its proper status with sewer pipe.

Flue lining is a material which is used for the inside lining of chimney flues. It is a hollow tubing made of clay. In shape it is generally rectangular or square. The common sizes are 8 by 8, 8 by 13, and 13 by 13 inches. It is manufactured in 2-foot lengths, generally with the same machines that make sewer pipe.

The carriers maintain that from all classification standpoints flue lining bears a much closer analogy to sewer pipe than to brick; that, being of hollow clay construction, it can not load heavily without liability of breakage, whereas it is possible to break a car by overloading with brick; that on account of its fragility claims for loss and damage on flue lining are considerable and average about the same as on sewer pipe, of which claims there is a large and continuously increasing number, but no figures are submitted as to the former on account, it is claimed, of the relatively small movement of flue lining as compared with sewer pipe; and that its value is nearer to that of sewer pipe than to that of ordinary brick. These statements are made by a member of the Western Classification Committee, as well as by a traffic official representing the carriers.

The single witness who appeared in opposition to the proposed increase is the traffic representative of a clay products concern at St. Louis. He denies that flue lining is fragile; he maintains that, as manufactured in St. Louis, it is hard, tough, and not easily broken; that his concern packs and braces it in cars in such manner that there is no chance for breakage; that their claims for damage are negligible; that they manufacture sewer pipe also and pack it similarly for shipment, and the percentage of claims is as small as on flue lining; that other low-grade clay products, such as drain tile, hollow building tile, clay conduits, and segment sewer blocks take brick rates and no good reason exists for differentiating flue lining from these clay products; and that flue lining takes brick rates throughout official classification and southwestern territories.

We are not impressed with the contention that flue lining should be included with the clay products herein enumerated, which take brick rates. These products do not compete with flue lining, and

we see no necessity on the ground urged for requiring a parity of rates; and the propriety of the inclusion of these other clay products in brick rates is not in issue in this case.

We incline to adopt the view of the respondents as to the nature, properties, etc., of flue lining. Moreover, the evidence shows that the protestant's product is hardly representative of the industry in general.

Taking all of the testimony and exhibits into consideration, it would seem not unreasonable to assess a higher rate for the transportation of flue lining than for the transportation of brick. The proposed removal of flue lining from the list of commodities taking the brick rates and the application of class E rates thereon, will make for uniformity of rates in the territory involved.

We are of the opinion and find that the carload rates on flue lining proposed in the tariffs under suspension have been shown to be reasonable, and an order will be entered vacating their suspension.

EGGS.

The rates covered by the suspended tariffs provide for an increase of 3 cents per 100 pounds on eggs in carloads from Kansas City territory, the Kansas groups, Omaha-Davenport territory, and Sioux City, Iowa, to Texas common points and the Fort Worth-Dallas group and to the differential territory west of Texas common points.

In justification of the increase the carriers point to the situation at Fayetteville, Ark., where the third-class rate of 86 cents prevails upon eggs to Texas common points. From Rogers, Ark., 20 miles north of Fayetteville on the same railroad, to the same destinations a commodity rate of 83 cents applies. Fayetteville is the point which is farthest north in the Little Rock-Fort Smith group taking the 86-cent rate, while Rogers is the point farthest south in the Kansas City group taking the 83-cent rate. The deviation from the long-and-short-haul clause of the fourth section is now protected by a fourth section application.

The carriers propose to remove the deviation from the rule of the fourth section by increasing the commodity rate from Kansas City to Texas common points from 83 cents to 86 cents. But in doing this it was found necessary to increase by a like sum of 3 cents the rates to Texas destinations from the other Missouri River crossings and the Kansas groups in order to preserve their existing rate relationship with Kansas City. The respondents also maintain that their rate structure, which is based on St. Louis, will be more consistent than at present if the increases are allowed, because the spread between the Kansas City and St. Louis egg rates will be lessened. Anticipating the objection that the deviation from the fourth section can be reme-

died as effectually by lowering the Fort Smith-Little Rock rate to the Kansas City basis as by raising the Kansas City rate to the Little Rock basis, respondents declared that Fort Smith-Little Rock points now take the third-class rate, and if this were changed to a commodity rate and put upon the Kansas City basis, St. Louis shippers would have good reason to demand a commodity rate to Texas points instead of the existing third-class rate, which commodity rate would be less than the class rate by the difference existing between the class and commodity rates from Kansas City to the same Texas destinations, namely, 10 cents per 100 pounds; and that if these low commodity rates were extended to St. Louis this might be followed by a corresponding extension to Chicago and thence to the Buffalo-Pittsburgh line.

The witness for the carriers states that the only object of the proposed readjustment on eggs is to do away with the fourth section deviation at Fayetteville. No attempt is made to justify the proposed increases from the standpoint of ton-mile or car-mile earnings, or by rate comparisons with similarly situated points. It is admitted by this witness that commodity carload rates are in effect from St. Louis and Kansas City to Texas points upon practically all commodities that move in carloads and that the movement of eggs from St. Louis is eastward, and not in the direction of Texas; in other words, that there is no competition between Kansas City and St. Louis on eggs moving to Texas destinations. In view of these statements it would seem that the objection of the carriers to the removal of the fourth section deviation at Fayetteville by according Kansas City rates to the Little Rock-Fort Smith group, in so far as such obligation is based upon possible competition from St. Louis, has very slight foundation in fact. Furthermore, the proposed increase covers points of origin in large sections of five states, and destinations as far west as El Paso, Tex., over lines of railroad where it is obvious that no fourth section question is involved.

The protestant shows that the average car-mile earnings on eggs for the Santa Fe system during 1913 were 17.54 cents for an average haul of 715 miles and 16.82 cents during 1914 for an average haul of 692 miles, whereas the car-mile earnings under a rate of 83 cents from the Little Rock-Fort Smith group to Texas common points, assuming that the fourth section deviation be remedied by giving this group the Kansas City rates, and assuming the average haul to be 400 miles, as appears from the protestant's exhibits, are 44 cents per car-mile. From Kansas City points to Texas points, assuming the average haul to be 650 miles, the car-mile earnings at the rate of 83 cents are shown to be 29.3 cents. Several other exhibits were submitted by the protestant for purposes of comparison tending to disprove the reasonableness of the proposed increases. Their rele-

vancy is sometimes more apparent than real, and undue weight has not been accorded to them.

Upon all of the facts of record we are of the opinion that the respondents have failed to justify the reasonableness of the proposed increased rates on eggs, and they will be required to cancel the suspended tariffs.

CIDER AND VINEGAR.

The tariffs under suspension herein cover proposed increased rates on cider and vinegar in certain portions of western trunk line and trans-Missouri territory which may be representatively set forth as follows: From manufacturing points in Arkansas to points in Kansas and southwestern Missouri and to Missouri River points the increases vary from 2 cents to 7 cents per 100 pounds; from Missouri River points to points in southeastern Kansas and southwestern Missouri, 7 cents per 100 pounds, effected by restoring the fifth-class rate; from Missouri River points and Topeka, Kans., to central and western Kansas jobbing points, 5 cents; and from Nebraska factory points to Kansas destinations, 5 cents, with through fifth-class rates or combinations of locals as a maximum.

This is a proposed readjustment of interstate rates to Kansas and Missouri on cider and vinegar. The circumstances leading to the proposed increases, as developed from the rate situation in Kansas during several years, are thus summarized from the testimony of one of the respondents' witnesses: Prior to 1906 fifth-class rates on cider and vinegar prevailed interstate to Kansas as well as intrastate in Kansas. In that year a differential of 7 cents under fifth class was established from Kansas City, Mo., to southeastern Kansas to meet the Topeka, Kans., intrastate rate to the same destinations. Subsequently in response to pressure from western Kansas jobbers, as well as from those at Kansas City, who represented that western Kansas was entitled to the same differential, the carriers extended the differential to western Kansas. The reduction of these intrastate rates was followed by similar reductions in rates to Kansas from producing points in Arkansas and Nebraska. Thereupon vinegar producers of southern Kansas complained to their state commission of discrimination against them, in that manufacturers at interstate points enjoyed special commodity rates on vinegar shipped into Kansas while their own shipments moved fifth class. The record shows that at the conclusion of the hearing before the Public Utilities Commission of Kansas the carriers were informed by the commission that it was preferable to have commodity rates increased from interstate points to Kansas rather than to establish a low schedule of state commodity rates from southern Kansas vinegar producing points. The carriers state that they finally arranged for a rate adjustment which was satisfactory to the state

commission. This readjustment was not, however, to become effective until corresponding changes were made in the interstate rates. These corresponding changes are now in question in this proceeding.

Much emphasis is laid by the respondents upon the fact that cider and vinegar are rated fifth class in the western classification and that in most instances the proposed new rates are upon that basis. Special importance is attached to the fact that the rate from Kansas City to southeastern Kansas was originally on the fifth-class basis, and that the proper solution of the difficulties which resulted in consequence of a departure from that basis is to restore the original status. This position is weakened, however, by the showing made by the protestants that commodity rates 7 cents under fifth class prevailed from the Mississippi River and Chicago to southeastern Kansas prior to the publication of the same differential from Kansas City, the protestants maintaining that the Kansas City commodity rate to southeastern Kansas had been made to conform with the basis from the Mississippi River and Chicago, and not solely on account of the situation at Topeka, as claimed by the respondents.

The only evidence submitted by the respondents in justification of the proposed increases is contained in two exhibits, one of which shows distances and the present, proposed, and fifth-class rates from Kansas City, Mo., Omaha, Nebr., Rogers and Siloam Springs, Ark., Falls City, Nebr., and Hutchinson and Wichita, Kans., to representative destinations in Kansas and Missouri. The other is a table of rates and of revenue per car and per car-mile upon vinegar to five representative destination points in Kansas and Missouri, as compared with similar data on soap, canned goods, sirup, wrapping paper, and roofing paper, all of which move fifth class, from Kansas City and Omaha.

The first exhibit affords a comparison of various rates, but it has little probative value on the question of reasonableness. So far as the other exhibit is concerned, in which comparisons are made with the revenue upon other commodities, it can hardly be considered, where so many different rates are involved, that data of this character covering the movement from the two points which are offered for comparison supply sufficient information to permit an adequate consideration of the subject. Of all the articles which are classified fifth class, the selections made by respondents for purposes of analogy to the movement of cider and vinegar do not appear to be closely comparable. No information was furnished as to the relative transportation conditions, such as the density of traffic over the selected routes and the character of equipment necessary, or as to such factors as the volume of movement of the selected commodities, liability to damage, comparative value, or other elements proper for consideration in making rate comparisons.

One of the protestants testified that 90 per cent of the vinegar used in all parts of the country is produced at Chicago and points east thereof; that very low rates are in effect from these eastern points, the rate from Chicago to Kansas City being 22½ cents per 100 pounds for a distance of 458 miles; and that no increase is sought to be made in this rate. It is similarly contended that no increases are proposed to Kansas City or western Missouri from Mississippi River points. In other words, the contention is that no consistent class readjustment is being accomplished by the proposed new tariffs, and that if the proposed increases are allowed to go into effect it will result in discrimination against Kansas City in favor of points east thereof; and inasmuch as the rate structure from Kansas City to southeastern Kansas is the foundation of the system of increases under suspension, if these are found not justified the entire proposed rate structure falls.

We are of opinion that the rates on cider and vinegar herein under suspension have not been shown to be reasonable, and an order will be issued requiring the cancellation thereof.

Certain schedules under suspension herein include proposed increases on cider and vinegar from Arkansas points to St. Louis and points east thereof, also from St. Louis, Peoria, Chicago, and St. Paul common points to points in Kansas, Nebraska, and Missouri. As no testimony in justification of these proposed increased rates was offered, it follows that the schedules will be ordered canceled.

The tariffs under suspension include a proposed cancellation in the case of northbound shipments, of an exception to the western classification giving cider and vinegar a rating in classes C and D from Oklahoma and Arkansas. The record is not clear as to the effect of the proposed cancellation. Witnesses for respondents have stated that the application of the exception northbound is inoperative on account of the existence of commodity rates northbound. It does not appear, however, that these rates may not in some cases be applicable at points where no commodity rates exist. The cancellation of the exception has not been justified.

BAUXITE ORE.

The proposed rates apply from Arkansas points in the vicinity of Little Rock and Hot Springs, the principal movement being from Bauxite, Ark. The increase proposed is uniformly 20 cents per gross ton. The destinations and basing points to which these rates apply are located in different parts of the country, the most important of these points from the standpoint of volume of this traffic being East St. Louis, Ill.

The rate to that point, under which about 80 per cent of the traffic moves, is \$2.20 per gross ton, and it is proposed to increase that rate

to \$2.40 per gross ton. The proposed rates per gross ton to eastern basing points are: Baltimore, \$6.18; Boston, \$7.18; Philadelphia, \$6.28; and New York, \$6.28, these rates being constructed on the basis of \$2.40 to East St. Louis plus the divisions demanded by the eastern lines. It appears, however, that the Arkansas lines have directed their agent to publish rates to the eastern points named which are lower than the existing rates to those points except that the rate thus directed to be published to New York is 32 cents higher than the present rate to that point and 12 cents higher than the rate named in the suspended schedule. It was stated by respondents at the hearing that these rates would now be stated in the tariffs but for the Commission's rules governing the amendment of tariffs under suspension. The changes in rates to eastern points thus proposed are due to the desire of the lines east of St. Louis to readjust their divisions for the purpose of bringing about a more equitable relationship of rates to the eastern points named.

A rate of \$4.95 to Niagara Falls became effective in 1908, but that rate was reduced to \$4.50 in October, 1909, and subsequently increased to \$4.62, while the rate now proposed is \$4.82.

The points to which the proposed rates apply, the present rate, the proposed rate, and the distance to each point are shown in the following table:

Rates on bauxite ore, carloads, minimum weight marked capacity of car but not less than 40,000 pounds, from Bauxite, Ark.

[Rates per ton of 2,240 pounds.]

To—	Distance.	Present rate.	Proposed rate.
	<i>Miles.</i>		
Allegheny, Pa.....	965	\$5.08	\$5.28
Aurora, Ill.....	637	3.22	3.42
Baltimore, Md.....	1,238	5.94	6.18
Belharc, Ohio.....	898	5.08	5.28
Boston, Mass.....	1,500	6.98	7.18
Buffalo, N. Y.....	1,091	4.62	4.82
Cairo, Ill.....	302	2.20	2.40
Carondelet, Mo.....	362	2.20	2.40
Chester, Pa.....	1,300	6.08	6.28
Chicago Heights, Ill.....	640	3.10	3.30
Cincinnati, Ohio.....	645	3.10	3.30
Coffeyville, Kans.....	341.5	2.40	2.60
Detroit, Mich.....	858	4.40	4.60
Dunkirk, N. Y.....	1,051	4.62	4.82
Du Po, Ill.....	265	2.20	2.40
East St. Louis, Ill.....	375	2.20	2.40
Erie, Pa.....	1,098	4.62	4.82
Hays (Allegheny county), Pa.....	961	5.08	5.28
Joliet, Ill.....	615	3.10	3.30
Joplin, Mo.....	341.5	2.40	2.60
Laurel Hill, N. Y.....	1,405	6.08	6.28
London, Ontario.....	972	5.04	5.24
Memphis, Tenn.....	155	1.50	1.70
Natrona, Pa.....	978	5.08	5.28
New York, N. Y.....	1,402	6.08	6.28
Niagara Falls, N. Y.....	1,113	4.62	4.82
Philadelphia, Pa.....	1,311	6.04	6.24
Pittsburgh, Pa.....	955	5.04	5.24
St. Louis, Mo.....	368	2.20	2.40
Steelton, Pa.....	1,292	5.98	6.18
Valley Junction, Ill.....	370	2.20	2.40
Wheeling, W. Va.....	903	5.08	5.28

Bauxite is produced in only four states in this country. More than 75 per cent of that production is in Arkansas, the other three states in which bauxite is produced being Georgia, Alabama, and Tennessee. Georgia ranks second in production, and Georgia and Alabama produce jointly from 12 to 18 per cent of the total production in the United States, the proportion varying from year to year. The total production has been gradually increasing. The production in 1914 was 219,318 gross tons, as compared with 52,167 gross tons in 1908. The Arkansas mines are practically within a circle not over 30 miles in diameter, and are near Little Rock. The protestants of record are the Aluminum Company of America, hereinafter called the aluminum company; Aluminum Ore Company; American Bauxite Company; the Republic Mining and Manufacturing Company; the Globe Bauxite Company; the Laclede-Christy Clay Products Company; the Norton Company; Superior Chemical Company; and Water Softening & Purification Works of Columbus, Ohio.

The Aluminum Ore Company and the American Bauxite Company are subsidiary companies of the aluminum company, and the Republic Mining and Manufacturing Company is closely affiliated with that company.

Bauxite is also produced in various countries other than the United States, but principally in France, India, and South America. The bauxite produced in this country has thus far come in serious competition only with that from France. The imports of bauxite have fluctuated greatly. In 1911, 43,222 tons were imported; in 1912, 26,214 tons; in 1913, 21,456 tons; and in 1914, 24,844 tons. The protestants claim that the European war greatly cut down the importation in 1914.

While bauxite is usually called an ore, it has no specific listing either as an ore or a clay, but it has the appearance of a clay. From bauxite is made the metal aluminum, sulphate of alumina, commonly called alum, fire brick, and alundum, which is used to make grinding wheels similar to emery wheels.

A carload of bauxite consists largely of lumps of various sizes, but some of the ore becomes finely powdered in handling. Box cars are required for the traffic, but cars of a high grade are not ordinarily used. The minimum weight is the marked capacity of the car, but in no event less than 40,000 pounds, and the average loading is shown to be 73,696 pounds, cars being usually loaded 9 per cent in excess of marked capacity.

It is claimed by the respondents that bauxite does great damage to the cars in which it is shipped, for the reason, as they assert, that the powdered bauxite pushes out the sides and ends of the cars; but the protestants deny this and it is not established by the evidence.

Of the uses of bauxite named in the record, the principal one is the making of aluminum, and the aluminum company, the largest manufacturer of aluminum, through subsidiary companies owns mines in Arkansas and in the other three states in this country in which bauxite is produced, its investment in Arkansas amounting to about \$1,250,000. From 90 to 95 per cent of the production in Arkansas is by that company. The value of domestic bauxite f. o. b. cars in Arkansas ranges from \$4.70 to \$5.50 per ton. The value of French bauxite, which is shown to be superior in quality to the American bauxite, is stated in the record as \$3.94 per ton in 1913. While the value of bauxite ore has increased, the value of aluminum has greatly decreased since it was first produced. Under the Dingley tariff a duty of \$1 per ton was imposed upon foreign bauxite, but that duty was removed by the present tariff law, which went into effect October 1, 1913. As bauxite is contraband, its importation has been virtually cut off by the European war. The protestants, however, predict that when the war ends the French bauxite will be imported in larger quantities than ever before, and also that bauxite from South America and India will soon enter this country in active competition with the domestic product. Under the existing freight rates from the Arkansas mines the French bauxite has been able to compete with the Arkansas bauxite as far west as Pittsburgh. Georgia bauxite pays a rate of \$2.75 per gross ton to East St. Louis, a distance of 592 miles.

A large part of the bauxite mined in Arkansas is shipped to the concentrating plant of the Aluminum Ore Company at East St. Louis, and from that point the larger part of the concentrate is shipped to Niagara Falls, where it is converted into aluminum. Some bauxite is shipped from the Arkansas mines direct to Niagara Falls, and there converted into aluminum, which is then shipped to Worcester, Mass., where it is used to make grinding wheels.

The mines at Bauxite are served directly by the Bauxite & Northern Railway, the connection of which with the Rock Island is at Gibbons, 0.7 of a mile from the mines of the aluminum company, which owns the Bauxite & Northern Railway through stock ownership, and the connection with the St. Louis, Iron Mountain & Southern is at Bauxite Junction, a distance of 2.4 miles from the same mines. The movement of bauxite ore from Bauxite began about the year 1900, but at that time there was no concentrating plant at East St. Louis, and the rates were made to eastern cities. About 1902 the concentrating plant at East St. Louis was constructed and application was made to the carriers for a low rate to that point for the development of the traffic, the necessity of meeting the competition of the Georgia mines and also the competition of French bauxite.

being urged as one reason for such a rate. It was represented by the aluminum company at that time that the value of bauxite f. o. b. cars Arkansas was about \$2.50 or \$3 per ton. A rate of \$1.80 was established in 1903, that rate being made up of the lowest amount which the Rock Island was willing to accept to Memphis, plus the lowest rate which the Illinois Central was willing to accept from Memphis to East St. Louis. It is claimed by the protestants that under that rate the carriers absorbed the switching charges at each end of the line, but that is disputed by the carriers, and the record leaves the matter in doubt. That rate was also established by the Iron Mountain, but with the express reservation of the right to increase the rate when business conditions should justify an increase, but only after giving to the aluminum company opportunity to be heard. In 1907 or 1908 the carriers gave notice to the aluminum company that the rate of \$1.80 was not compensatory and that they desired to establish a rate of \$2.70 per ton, and thereafter a rate of \$2.20 per ton was established.

It is suggested by respondents that this rate was probably a compromise, while the aluminum company says it "reluctantly agreed" to the advance as it could do nothing else. Out of that rate the Bauxite & Northern is allowed a division by the Rock Island of 8 cents per ton and by the Iron Mountain of 12 cents per ton. When the rate was first established it did not cover the cost of delivery at East St. Louis, but in 1909 one of the railroads at East St. Louis began to absorb the switching charge of the delivering line, and the other lines then met the competition. Since that was done all the lines have made free delivery at East St. Louis. It was suggested by a witness for respondents that a short time before the carriers began to make free delivery at East St. Louis the aluminum company applied for a reduction of the rate, and that the absorption of the switching charge at East St. Louis may have been conceded as a compromise. The Iron Mountain in addition to the switching charge which it now absorbs at East St. Louis formerly absorbed an additional switching charge of \$3 per car, later reduced to \$2.50 per car, which it paid to the Mobile & Ohio Railroad, but the Aluminum Ore Company by the building of the Alton Southern Railroad, a belt line, has enabled the Iron Mountain to dispense with the payment of that charge.

After the rate of \$1.80 to East St. Louis was established the rates to eastern basing points were made, and have ever since been made, on the basis of the rate to East St. Louis, plus the divisions of the lines east of East St. Louis. The Rock Island claims that at the time the rate of \$1.80 per ton was established it had but little tonnage in Arkansas, and was willing to do almost anything to develop traffic.

The traffic which the St. Louis, Iron Mountain & Southern handles is moved by that line from Bauxite Junction to East St. Louis, and the traffic which the Rock Island handles is moved by that line from Gibbons to Memphis, and there delivered to the Illinois Central, or is taken by the Rock Island to Bridge Junction, Ark., opposite Memphis, and there delivered to the St. Louis & San Francisco Railroad. The Rock Island prior to 1913, operated a boat across the river at Memphis, but since that time it has operated over the bridge of the Kansas City & Memphis Railway & Bridge Company, to which it pays a bridge toll of 1½ cents per 100 pounds. Flood conditions have compelled the Rock Island to move its terminals back from the river for a distance of about 5 miles, and this accounts for the fact that it has ceased to operate the transfer boat which it formerly operated. When the traffic moves up the west side of the river over the St. Louis & San Francisco Railroad it pays at St. Louis a bridge toll of 1½ cents, which is also absorbed by the carriers.

The short-line distance from Bauxite to East St. Louis via the Bauxite & Northern and the Missouri division of the St. Louis, Iron Mountain & Southern is 375 miles. The distance via the Bauxite & Northern, the Rock Island, and the Illinois Central is 474 miles, and via the Bauxite & Northern, the Rock Island, and St. Louis & San Francisco is 457 miles.

The proposed rate of \$2.40 per gross ton to East St. Louis is the equivalent of \$2.14 per net ton and yields a net ton revenue per mile of 5.7 mills for a haul of 375 miles. Out of that rate is absorbed the East St. Louis switching charge of 10 cents per net ton and the bridge toll of 30 cents per net ton, leaving a net ton-mile revenue of 4.64 mills.

To justify this rate the respondents offer for comparison a rate of \$2.35 per net ton on coal from Illinois mines on the St. Louis, Iron Mountain & Southern to Bauxite for an average distance of 354 miles, which yields 6.6 mills per ton-mile. This rate became effective September 30, 1915, pursuant to our order in the *Western Rate Advance Case* approving an increase of 10 cents per ton in the rate. The former rate of \$2.25 per ton yielded a ton-mile revenue of 6.3 mills. The average loading of coal from the Illinois mines is about 76,000 pounds.

The record shows also a rate of \$3.60 per net ton on cement from East St. Louis to Bauxite, yielding a net ton-mile revenue of 9.6 mills. In *Little Rock Chamber of Commerce v. St. L., I. M. & S. Ry. Co.*, 26 I. C. C., 341, we found that a rate of 17 cents per 100 pounds, or \$3.40 per net ton, on cement from St. Louis to Little Rock was not unreasonable. The evidence in that case indicated that the average loading per car was about 21 tons, and we said that average car

earnings of \$71.40 for a haul of 349 miles were not unreasonable. Here the average car earnings on bauxite for a haul of 375 miles would be \$78.95 under the proposed rate. This, however, is for an average load 75 per cent greater than that of cement in the case cited, the ton-mile revenue from the cement rate being 9.7 mills, as compared with 5.7 mills from the proposed rate on bauxite. The record shows that the value of cement ranges from \$5 to \$8 per ton. While the rate in one direction is not always a fair test of what the rate should be in the opposite direction, there is no suggestion in the record of any reason for higher rates from East St. Louis to Arkansas points than in the opposite direction, while it does appear, on the contrary, that the preponderance of the movement of empty cars between those points is from East St. Louis.

The protestants offer for comparison a rate of \$3.70 per gross ton on bauxite concentrate from East St. Louis, Ill., to Maryville, Tenn., a distance of 609 miles, the average loading being 84,906 pounds. This rate yields a revenue per car-mile of 23 cents as compared with a revenue of 21.2 cents per car-mile which the proposed rate on bauxite ore from Bauxite to East St. Louis would yield. Other things being equal, the carriers would be entitled to a somewhat greater revenue per car-mile for the haul from Bauxite to East St. Louis than for the longer haul from East St. Louis to Maryville, and notwithstanding the heavier loading and greater value of the concentrate we think the comparison tends to justify rather than to condemn the proposed rate on the ore from Bauxite to East St. Louis.

No facts appear in the record from which we can determine whether or not the rates to points north and east of East St. Louis which are higher than the rate to that point are reasonable.

The only points of destination involved which are west of East St. Louis are St. Louis, Mo., Carondelet, Mo., Joplin, Mo., and Coffeyville, Kans. The proposed rates to St. Louis and Carondelet are the same as the proposed rate to East St. Louis, and the distance to each point is substantially the same as the distance to East St. Louis. The short-line distance from Bauxite to Joplin is 341.5 miles and to Coffeyville the same, and the proposed rate to each of these points is \$2.60 per gross ton. While the distances to these points are less than the distance to East St. Louis the rate proposed is higher than the rate proposed to East St. Louis. The record does not show that transportation conditions from Bauxite to Joplin and Coffeyville are so unfavorable as compared with transportation conditions from Bauxite to East St. Louis as to justify a higher rate for the shorter distance.

The only other rates involved are the rates to Cairo and Memphis. While the distance to Cairo, which takes the same rate as East St.

Louis, is considerably less than the distance to that point, and the proposed rate, if it applied to Cairo alone, might be considered too high, we can not say that it is unreasonable as a group rate. The distance to Memphis from Bauxite is 155 miles and the proposed rate is \$1.70 per gross ton. This rate is properly related to the proposed rate to East St. Louis.

Those protestants who are consumers merely of bauxite say that if the proposed rates should become effective they would be compelled to seek some other field of production than Arkansas, while the principal owners of the Arkansas mines, who are also consumers, say that in the event of the increase of rates as proposed they would either have to move their bauxite from Arkansas by water or procure bauxite from some other source, and they insist that as they made their investments in the expectation that the freight rates would not be increased the respondents ought not to be permitted to make a further increase after having made an increase of 22 per cent in 1908. The fact, however, that investments have been made in the expectation that existing rates would be continued in effect can not be considered in determining the reasonableness of proposed increased rates. *Southern Pacific Co. v. Interstate Commerce Commission*, 219 U. S., 433.

In *Chattanooga Log Rates*, 35 I. C. C., 163, 168, we said:

However reluctant the Commission may feel to sanction changes in rates which tend to impair or destroy the value of investments made in expectation of their continuance, it can not on that ground deny the carriers the right to charge rates which are just and reasonable.

Both parties have placed in the record many rates which are of no value for comparison, for the reason that there is no showing whatever either as to the movement of traffic under the rates or as to the similarity of traffic or transportation conditions.

From the facts of record we conclude and find that the respondents have justified the proposed rates on bauxite to East St. Louis and to other points to which the same rate is named in the suspended schedules and also the proposed rate to Memphis, but we further conclude and find from the facts of record that the other rates proposed have not been justified. These findings, however, are without prejudice to or approval of the readjustment of rates to eastern points which it was announced at the hearing would be made. An appropriate order will be entered.

BOOTS AND SHOES, LEATHER, AND BOOT AND SHOE FINDINGS.

Under this heading there are included boots and shoes, leather, shoe stays, boot and shoe lasts, and other articles that come under the general caption of boot and shoe findings. The list embraces about 65 articles. The increased rates proposed upon them are gen-

erally less than carload, and apply for the most part between boot and shoe manufacturing points in central Missouri and St. Louis, Chicago, Milwaukee, and Missouri River points, including Kansas City and Omaha.

The purpose and effect of the proposed change, as stated by the respondents, is to restore these commodities to their proper classification basis. Boots and shoes are rated first class, in any quantity lots, in the official, western, and southern classifications. The amount of the increase in the less-than-carload rates is usually considerable. An increase of $2\frac{1}{2}$ cents per 100 pounds is proposed in the carload rate upon the item of leather between interstate producing points and Missouri factory points.

The respondents testify that boot and shoe manufacturing in central Missouri probably had its inception in Jefferson City on account of the favorable industrial conditions obtaining throughout that section. Freight rates were put upon a low level to enable the manufacturers at that point to build up their business. Low commodity rates were put in, both upon carload and less-than-carload quantities, on the raw materials inbound and the finished product outbound. These rates, it is now represented, were never intended to be permanent. As this class of articles moves generally on a first-class basis, the carriers now seek to return to that basis. They contend that if these articles continue to take a less-than-carload commodity rate they are in danger of laying themselves open to a charge of discrimination in that they do not extend less-than-carload commodity rates to other materials, the normal movement of which is in less-than-carload quantities. It was also maintained that the tariffs under suspension herein had been agreed upon with the boot and shoe manufacturers as satisfactory to them, and that in view of the rates on carload quantities, which are much lower than the class rates, the proposed increase on less than carloads to the class basis should be allowed.

A single protestant against these schedules appeared at the hearing. His attack was directed against the proposed rates upon leather and other boot and shoe material. He endeavored to establish that the proposed increases are in effect discriminations against the small manufacturer in favor of certain large manufacturers, who can individually or collectively ship in carloads. The existing carload rate on boot and shoe findings from St. Louis to Jefferson City is 9 cents, while the present less-than-carload rate on the same articles is $17\frac{1}{2}$ cents, the number of different kinds of articles subject to such rate being 65. Under the proposed new tariff these articles take class rates varying all the way from \$1.125 down to $22\frac{1}{2}$ cents for the haul from St. Louis to Jefferson City of 125 miles.

While asking for these increases, no effort is made to increase the admittedly low carload rate of 9 cents for the same haul, which is effective upon these same articles. In other words, upon the basis of a shipment rated first class under this schedule, which will cover the greater number of the articles, the rate being 45 cents per 100 pounds, it will cost the small manufacturer as much to ship a consignment of 4,000 pounds as it will his large competitor for a carload of 20,000 pounds at 9 cents. It was also developed upon the hearing that the manufacturers who had consented to the proposed increase in the less-than-carload rates were interested in the maintenance of the 9-cent carload rate; so long as this is maintained, it is obviously to the interest of the large manufacturer that the spread between the carload and less-than-carload rates be as great as possible.

While the proposed less-than-carload rates upon boots and shoes were not opposed at the hearing, we hold that what has been said with regard to the discriminatory character of the proposed less-than-carload rates upon boot and shoe findings is also applicable to the proposed increases in the rates upon boots and shoes. An examination of the exhibits of respondents will show that the present less-than-carload rate on boots and shoes from Jefferson City to St. Louis is exactly double the carload rate. It is proposed to increase the discrepancy by raising the less-than-carload rate from 30 cents to 45 cents. Since the carload rate remains at 15 cents, the less-than-carload rate will be three times the carload rate if the rate under suspension is allowed. Practically the identical situation will be found to exist with respect to the present and proposed rates to Chicago. The following table sets forth these comparisons:

From Jefferson City.	To St. Louis.	To Chicago.
	Cents.	Cents.
Present carload.....	15	25
Present less-than-carload.....	30	50
Present carload to carload and less-than-carload.....	15	25
Proposed carload to carload.....	15	25
Proposed less-than-carload.....	45	71
Spread under proposed rates between carload and less-than-carload.....	30	46

As no adequate justification appears for the proposed increases in the less-than-carload rates in the tariffs under suspension herein covering boots and shoes and boot and shoe findings, including all materials used in the manufacture of boots and shoes, these proposed less-than-carload rates will be ordered to be canceled. The present carload rates are represented as being unusually low and noncompensatory, and this was not contested at the hearing. The slight increase of 2½ cents per 100 pounds in the carload rate upon leather which is proposed will have a tendency toward decreasing the existing spread between

the carload and less-than-carload rates. The carload rates now under suspension in the above tariffs we find to be justified, and they will be permitted to become effective, except the proposed increases in the carload minima from 15,000 pounds to 20,000 pounds, which we find not justified.

DRIED AND EVAPORATED FRUITS.

The tariff under suspension involves proposed increases in the rates on dried and evaporated fruits from producing points in Arkansas and Oklahoma to points of destination in the three Kansas groups, Nebraska, Iowa, Minnesota, and Illinois, also to Missouri River points, St. Louis and points taking the same rates or basing thereon, and Memphis, Tenn. At the hearing the controversy narrowed down to rate comparisons between producing points in northwestern Arkansas and the above enumerated markets, especially the Kansas City, St. Louis, and Memphis gateways.

The respondents claim that the present rates on dried and evaporated fruits were established many years ago in order to encourage the fruit-growing industry, and were upon a much lower basis than was warranted by the transportation service which they represented, and if continued will be discriminatory as against all other commodities moving from and to the same points. The carriers complain that they have been moving this business to the basing points, St. Louis and Kansas City, at approximately the rate on lumber. In making their present readjustment they give Kansas points a differential of 10 cents over Kansas City on carloads, which results in some cases in a reduction of 3 cents per 100 pounds from the present rate, and in all other cases they provide for an increase of 5 cents per 100 pounds in the existing carload commodity rate. The less-than-carload rates are increased to the third-class basis, which is the rating given this commodity in less than carloads in the official, southern, and western classifications.

The protestants are packers and producers of fruit in northwestern Arkansas. They submitted various exhibits tending to show the injury which would result to the fruit industry if the new rates should become effective. They ship both in carloads and less than carloads, in about the ratio of 2 to 7. The particular complaint is against the proposed less-than-carload rates, which, as shown by exhibits, are increased in varying ratios. From Rogers, Ark., a representative shipping point, to representative destinations, the proposed increase will average about 59 per cent. Uncontroverted evidence offered by the carriers was to the effect that the existing rates, both carload and less than carload, are unduly low. But no data, other than the readjustment to the class basis under which

these commodities generally move in western and southwestern territories, are submitted for the determination of what is a reasonable rate. The exhibits for the most part are directed toward setting out existing industrial and commercial conditions, including the competition which protestants now have to meet from New York, California, and the Mississippi River. The claim is made by protestants that the increase, especially in the less-than-carload rates, will necessarily curtail either their existing markets or their profits.

"It is well settled that we may not make the needs of the shipper the basis for reasonable transportation rates." *Advances in Rates on Cooperage*, 24 I. C. C., 656, 659, citing *Southern Pacific Co. v. I. C. C.*, *supra*.

The fact that a readjustment of certain rates here in question which have been in existence for a considerable period will necessitate an increase should not preclude the establishment of the proposed increases if they are reasonable. In *Advances in Rates on Cooperage*, *supra*, the Commission said:

The lower rates have been in effect for several years. But, looking at it from the other side, protestant has had the benefit of rates for a long time which were lower than any that we could prescribe as reasonable.

The question as to the reasonableness of the rates under suspension will be separated into a discussion of the proposed new carload and less-than-carload rates. The respondents have made a consistent increase of 5 cents in the carload rates, except as heretofore noted. In both official and southern classifications dried and evaporated fruits in carloads are rated fifth class, and reference to respondents' exhibits shows that the proposed ratings are generally analogous to the western fifth-class rate. These exhibits likewise show that the proposed carload rates from the principal shipping points in northwestern Arkansas and from St. Louis, which is the principal competitor of those points, to the principal consuming points here under discussion are closely comparable, without taking into account the advantages of location which St. Louis enjoys. We hold that the respondents have justified the proposed increase in the carload rates upon dried and evaporated fruits.

The reasonableness of the proposed less-than-carload rates requires further comment. From respondents' exhibits a fair average of the spread between existing carload and less-than-carload rates is about 50 per cent. What percentage relationship should exist between the carload and less-than-carload rates is difficult to determine in any case, although the Commission has at different times considered various factors entering into the question. It was said in *Business Men's League v. A., T. & S. F. Ry. Co.*, 9 I. C. C., 318, 367, that a differential of 50 per cent in the less-than-carload rate upon transcontinental

traffic there under consideration was not abnormal. While the evidence is not entirely consistent, it would appear that the less-than-carload movement in the territory is generally made up of small individual shipments, the traffic officer of one of the respondent lines expressing doubt as to whether 1,000 pounds of the commodity in question would move from Arkansas to Kansas City three times a week. This would necessarily tend to increase the cost of service, although a sufficient basis for the determination of a just percentage relationship between the carload and the less-than-carload rates upon dried and evaporated fruits is not furnished by the record herein. However, from the facts of record we are of the opinion that the proposed increased spread is not of such a nature that it should of itself be permitted to defeat the new alignment of less-than-carload rates upon a classification basis as herein proposed.

As against the showing of reasonableness made by the carriers, there is no evidence that the proposed increased rates are inherently unreasonable. What the protestant has shown is that they are higher than like rates from such points as St. Louis and the other Mississippi River crossings. This comparison, in view of different traffic conditions prevailing from the Mississippi River points and the district of northwestern Arkansas, is deemed irrelevant. Consideration has also been given to that portion of the testimony wherein a tentative suggestion was made to adjust the proposed rate to Memphis so as to meet St. Louis competition. Upon the entire record we are of opinion that the carriers have justified the proposed increased rates upon dried and evaporated fruits which are contained in the tariff under suspension, and an order will be entered vacating the suspension thereof.

LOUISIANA ADJUSTMENT.

It is stated by one of the witnesses for respondent carriers that the tariffs involved herein are supplement 17 to F. A. Leland's tariff I. C. C. No. 1037, and supplement 11 to F. A. Leland's tariff I. C. C. No. 1077. The former of these supplements is a local, joint, and proportional tariff of the southwestern lines applying on classes and commodities from points in western trunk line, official classification, and southern classification territories to points of destination in Louisiana and Texas. It was suspended in its entirety in connection with the *Western Rate Advance Case* until March 31, 1915, further suspended until September 30, 1915, and transferred to Investigation and Suspension Docket 606. Its effective date has been postponed to December 31, 1915.

The record in the present proceeding shows that many items in this suspended supplement 17, covering increases, were republished
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and now provide for increases in excess of those contained in the suspended supplement. In a few cases the republished rates are identical with those under suspension. The methods employed by the carriers in their conduct of this matter call for condemnation. These increases are carried in Leland's I. C. C. No. 1077 and supplements thereto and were filed to become effective on April 1, 1915. The proposed increased rates on agricultural implements to Louisiana, which were carried in supplement 11 to Leland's I. C. C. No. 1077, were separately suspended by the Commission in response to protests by the interests involved. With the exception of the agricultural implement schedules, no justification was furnished for the proposed new system of tariff rates at the hearing, and though assurances were there given that data would be furnished in support of the increases proposed, nothing has since been received except a series of tables making comparisons of the old with the new rates. This is in further disregard of the manifest intent of the Commission's order. No attempt having been made to justify the rates under suspension, except the schedules relating to agricultural implements, the reasonableness of these rates has not been established and we find that rates in excess of those in effect immediately prior to April 1, 1915, are, and for the future will be, unreasonable. The order to be entered will require the establishment and maintenance for the statutory period of the rates in effect immediately prior to April 1, 1915, which rates are herein and hereby found reasonable. This will dispose of all of the schedules herein involved under this head except those relating to agricultural implements.

AGRICULTURAL IMPLEMENTS TO LOUISIANA.

The items herein under suspension, all taken from supplement 11 to Leland's I. C. C. No. 1077, cover rates on agricultural implements, cordage, and twine therein enumerated from the St. Louis, Chicago, Buffalo-Pittsburgh, Cleveland, Detroit-Toledo, and Louisville groups, and other named points, to Louisiana destinations.

The present effective rates upon agricultural implements are made up of the interstate factor to New Orleans plus the state factor beyond, where the latter has been filed with the Interstate Commerce Commission. The state factor has been withdrawn with respect to certain destinations in Louisiana and through rates to these destinations which exceed the combination on New Orleans are proposed to be substituted therefor. A fourth section deviation has been avoided by the withdrawal of the state factor. The proposed increases involved are from 4 cents to 31 cents per 100 pounds.

The respondents state in their brief that the purpose of this adjustment was to cancel certain rates which in the past had been made

on a combination of low water-compelled or state-compelled rates and to apply in their stead the standard differential basis of rates. The respondents' witness submits in justification of the proposed increases that they are reasonable *per se*, and respondents in their brief contend that neither a rate compelled by water competition nor a rate made by a state commission is a proper measure of the reasonableness of an interstate rate, and that the proposed rates should not be condemned simply because lower combinations can be effected by the use of such inapplicable factors. They support their contention by numerous citations of authority.

But it lies with respondents to show affirmatively that the proposed increases are reasonable. This they have not done. One of the witnesses for respondents made orally at the hearing a few comparisons of Texas rates with Louisiana rates from the same points of origin herein involved, but this comparison was limited to a statement of rates and distances. It does not seem to us that the meager information afforded by the respondents as a basis for comparisons is entitled to much probative force where the justification of an entire new set of rates is involved.

On the other hand, an exhibit has been filed by a protestant showing the present and proposed rates, the carload minima, average loading, percentage of increase, and revenue per car, per car-mile, and per ton-mile upon the bases of the present rates and the proposed rates. Portions of this exhibit are reproduced in the following table, rates being stated in cents per 100 pounds:

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Statement of current earnings from Chicago to Louisiana points.

Destination	Rate per ton on weight	Rate from Chicago to New Orleans	Miles from New Orleans	Present rate (New Orleans to destination)	Pro- posed rate	Per cent of old value	Revenue (present rate, based on aver- age weight)			Revenue (proposed rate, based on aver- age weight)		
							Per car.	Per ton- mile.	Miles.	Per car.	Per ton- mile.	Miles.
Abbeville, La.	1.07	24,000	148.2	68	65	12.07	\$188.00	17.25	10.63	\$211.25	19.76	12.16
Acme, La.	1.07	24,000	151.2	57	63	14.03	185.25	17.25	10.63	211.25	19.71	12.16
Baton Rouge, La.	1.07	24,000	98.9	85	65	18.18	178.75	17.67	10.81	211.81	20.77	12.78
Birmingham, Ala.	1.07	24,000	240.9	40	65	22.12	191.75	16.45	10.25	243.15	21.17	13.03
Bozeman, La.	1.07	24,000	148.6	59	65	10.17	191.75	17.22	10.63	211.25	19.08	11.74
Chattanooga, Tenn.	1.07	24,000	151.1	57	65	14.03	185.25	17.25	10.63	211.25	19.08	11.74
La Fayette, La.	1.07	24,000	148.7	57	65	14.03	185.25	17.25	10.63	211.25	19.08	11.74
Lake Arthur, La.	1.07	24,000	149.7	57	65	14.03	185.25	17.25	10.63	211.25	19.08	11.74
Mer Rouge, La.	1.07	24,000	149.8	57	65	14.03	185.25	17.25	10.63	211.25	19.08	11.74
Patterson, La.	1.07	24,000	149.9	57	65	14.03	185.25	17.25	10.63	211.25	19.08	11.74
Wach, La.	1.07	24,000	149.4	58	65	12.07	188.50	16.86	10.39	211.25	18.91	11.64
Abbeville, La.	1.07	30,000	148.2	43	63	51.10	161.08	13.12	8.04	244.40	22.80	12.16
Acme, La.	1.07	30,000	151.2	42	64	54.76	157.92	14.72	7.83	244.40	22.80	12.16
Baton Rouge, La.	1.07	30,000	98.9	40	63	62.50	150.40	14.04	7.79	244.40	22.79	12.06
Birmingham, Ala.	1.07	30,000	152.6	45	63	44.44	190.20	15.77	8.39	244.40	22.78	12.12
Bozeman, La.	1.07	30,000	148.6	44	78	70.45	165.44	14.29	7.59	252.00	24.35	12.06
Chattanooga, Tenn.	1.07	30,000	149.9	46	65	41.30	172.96	15.02	8.31	244.40	21.67	11.83
La Fayette, La.	1.07	30,000	148.7	43	65	51.10	181.08	14.72	7.83	244.40	22.08	11.74
Lake Arthur, La.	1.07	30,000	149.7	43	65	51.10	181.08	14.72	7.83	244.40	22.08	11.74
Mer Rouge, La.	1.07	30,000	149.8	43	65	51.10	181.08	14.72	7.83	244.40	22.18	11.80
Patterson, La.	1.07	30,000	149.9	43	65	51.10	181.08	14.72	7.83	244.40	22.14	11.78
Wach, La.	1.07	30,000	149.4	43	65	54.76	157.92	14.31	7.61	244.40	22.04	12.04
Abbeville, La.	1.07	30,000	148.2	43	65	54.76	157.92	14.31	7.61	244.40	22.04	12.04
Acme, La.	1.07	30,000	151.2	44	78	70.45	165.44	14.29	7.57	252.00	24.35	12.06
Baton Rouge, La.	1.07	30,000	98.9	43	65	51.10	181.08	14.48	7.70	244.40	21.85	11.64
Birmingham, Ala.	1.07	30,000	152.6	46	65	41.30	172.96	14.78	7.86	244.40	20.89	11.11
Bozeman, La.	1.07	30,000	148.6	44	65	47.73	168.44	14.94	7.95	244.40	22.08	11.74

From the foregoing table it will be seen that the revenue per car on business from Chicago to the Louisiana destinations which are shown thereon is from \$150.40 to \$198.25. The car-mile earnings over distances varying between 1,001 miles and 1,170 miles range from 14.29 cents to 17.57 cents. The revenues per net ton-mile are all above 10 mills on agricultural implements and run from 7.57 mills to 8.39 mills on the heavier loading binding twine. Considering the character of the traffic and the length of the haul and in the absence of any other evidence to the contrary, we can not hold that the present rates are too low.

Upon the facts of record we are of opinion that the carriers have not justified the proposed increased rates upon agricultural implements, cordage, and twine, which are under suspension in supplement 11 to Leland's I. C. C. 1077, and the order to be entered will direct the cancellation thereof.

MISCELLANEOUS RATES TO AND FROM MISSOURI FACTORY POINTS.

In addition to the proposed rates on boots and shoes, leather and boot and shoe findings which we have considered under that heading, the respondents propose increases in rates on various kinds of raw material and also on some finished products to and from manufacturing points in Missouri.

As to many of these articles the respondents propose to cancel the present effective any-quantity rates upon shipments of less than 10,000 pounds, leaving class rates to apply to such shipments, the present rates, however, to continue in effect as to lots of 10,000 pounds or more. We have repeatedly held that the mere fact that certain traffic is hauled in trainload lots does not authorize the application to such traffic of a basis of rates different from that applied to traffic of the same kind when shipped in single carloads. *Anaconda Copper Mining Co. v. C. & E. R. R. Co.*, 19 I. C. C., 592, 596; *Woodward-Bennett Co. v. S. P., L. A. & S. L. R. R. Co.*, 29 I. C. C., 664.

Applying here the principle on which those decisions were based, we are of opinion that the rate per 100 pounds or per ton on less-than-carload shipments of this general character can not lawfully vary with the quantity shipped. The respondents have not justified the proposed cancellation of the any-quantity rates, and the schedules providing for the same must be canceled.

Evidence was introduced by respondents in support of the rates proposed as collateral alignments of the tariffs generally. No evidence was offered in opposition, and upon the record we find that these proposed changes have been justified.

FURNITURE FROM KANSAS CITY TO OKLAHOMA POINTS.

The suspended tariffs cover proposed increases of 7 cents per 100 pounds in the rates on furniture from Kansas City and other points to groups 6, 7, and 8 in southern and western Oklahoma, and an increase of 3 cents from the same points of origin to points in group 9, which is the extreme western portion of the same state.

The respondents maintain that the suspended tariffs are intended to correct an error in an item in Southwestern Lines tariff I. C. C. No. 561, in which a rate from Kansas City, Mo., of 60 cents per 100 pounds, which should have been limited to groups 1 to 5, inclusive, in Oklahoma, had been mistakenly extended to groups 6, 7, and 8 in the western and southern parts of that state, where a 67-cent rate had formerly prevailed. It is now sought to reinstate this rate of 67 cents.

The respondents allege that the situation first came to their attention through a complaint by the furniture interests at Fort Smith, Ark., that Kansas City enjoys a rate of 60 cents to western Oklahoma as against their own rate of 67 cents, although the mileage from Fort Smith is less than from Kansas City. The complaint of the Fort Smith shippers was withdrawn upon representations by the carriers that they would publish rates from Kansas City in proper relationship with those from Fort Smith.

To remedy what they admit is an indefensible discrimination, the carriers have adopted the alternative of raising the Kansas City rates to the Fort Smith basis, and maintain that the proposed new rates are just and reasonable for the following reasons: (1) Comparison of the car-mile and carload earnings on furniture, with a list of 15 other representative commodities moving from Kansas City to the same destinations in western Oklahoma, as set forth in one of respondents' exhibits, shows that the earnings on furniture are lower than on the other commodities; (2) the rate on furniture from Kansas City to the Dallas-Fort Worth group made as a result of the Commission's report in *In re Advances on Furniture*, 25 I. C. C., 299, is 78 cents per 100 pounds. Using the present 60-cent rate to certain southern and western Oklahoma destinations herein involved plus the interstate rate from the latter points to certain north Texas points which was fixed by the Commission in the *Corporation Commission of Oklahoma v. A. & S. Ry. Co.*, 26 I. C. C., 520, will give a through rate from 2 cents to 5 cents below the 78-cent rate from Kansas City to the Dallas-Fort Worth group, which has already been approved by the Commission, and the existing Kansas City-Oklahoma factor of 60 cents must therefore be unreasonably low; (3) the rate on furniture from Kansas City to Kansas-Oklahoma border points approximates 60 cents per 100

pounds, and the carriers are asking only 7 cents more for the haul to southern and western Oklahoma; (4) a comparison of the car-mile and ton-mile earnings under the proposed rates from Kansas City to the group points herein involved as against similar earnings on furniture out of Fort Smith shows that the existing revenue from Fort Smith is greater than the revenue from Kansas City under the proposed increases. The statements of respondents are supported by numerous exhibits. The exhibit making comparison of the earnings on furniture with similar earnings on other commodities follows, the distance from Kansas City in miles being shown after the name of each destination point:

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From Kansas City, Mo.		To Muskogee, Okla., 254.			To Oklahoma City, Okla., 344.			To Sallisaw, Okla., 291.		
Commodity.	Average weight.	Rate.	Revenue per car.	Revenue per car-mile.	Rate.	Revenue per car.	Revenue per car-mile.	Rate.	Revenue per car.	Revenue per car-mile.
	Pounds.	Cents.			Cents.			Cents.		
Furniture.....	16,193	45½	\$73.68	\$0.2900	60	\$97.15	\$0.2824	60	\$97.15	\$0.373
Automobiles.....	11,943	85	101.52	.3907	95	113.46	.3298	95	113.46	.3899
Agricultural imple- ments.....	32,225	33½	107.99	.4250	42	135.34	.3934	33	106.34	.3454
Machinery.....	25,338	39	149.52	.5887	49	184.02	.5349	39	149.52	.5175
Crockery.....	33,277	36	119.80	.4717	46	153.07	.4450	36	119.80	.4117
Canned goods.....	45,018	29	130.55	.5138	41	184.57	.5365	36	162.06	.5509
Fruit jars.....	36,422	36	131.12	.5162	46	167.54	.4870	36	131.12	.4506
Crackers.....	23,870	46	109.80	.4323	62	147.99	.4302	45	107.42	.3991
Wire and nails.....	43,594	30	131.78	.5188	45	196.17	.5703	36	156.94	.5799
Sewing machines.....	18,000	62	111.60	.4394	74	133.20	.3872	65	117.00	.4021
Matches.....	30,117	46	138.54	.5454	62	186.73	.5429	45	125.53	.4357
Matting, straw.....	25,170	58	145.99	.5748	58	145.99	.4244	58	145.99	.5117
Wrapping paper.....	41,241	36	159.27	.6270	45	199.08	.5787	36	159.27	.5471
Stoves.....	33,338	36	120.02	.4725	40	133.35	.3876	36	120.02	.4120
Tin articles.....	21,492	46	94.26	.3711	62	127.05	.3693	45	92.21	.3169
Woodenware.....	30,950	45	139.28	.5484	62	191.89	.5578	45	139.28	.4796

From Kansas City, Mo.		To Tulsa, Okla., 257.			To Tyrone, Okla., 423.		
Commodity.	Average weight.	Rate.	Revenue per car.	Revenue per car-mile.	Rate.	Revenue per car.	Revenue per car-mile.
	Pounds.	Cents.			Cents.		
Furniture.....	16,193	45½	\$73.68	\$0.2907	70	\$113.35	\$0.2988
Automobiles.....	11,943	85	101.52	.3951	95	117.04	.2773
Agricultural imple- ments.....	32,225	33½	107.95	.4200	52	167.57	.3971
Machinery.....	25,338	39	149.52	.5818	52	199.36	.4721
Crockery.....	33,277	36	119.80	.4601	53	176.37	.4179
Canned goods.....	45,018	29	130.55	.5090	49	220.59	.5227
Fruit jars.....	36,422	36	131.12	.5102	53	193.04	.4506
Crackers.....	23,870	46	109.80	.4272	69	163.32	.3446
Wire and nails.....	43,594	30	131.78	.5128	53	221.05	.5296
Sewing machines.....	18,000	62	111.60	.4312	77	183.60	.3294
Matches.....	30,117	46	138.54	.5391	69	204.80	.4639
Matting, straw.....	25,170	58	145.99	.5681	63	158.57	.3736
Wrapping paper.....	41,241	36	159.27	.6197	53	214.48	.5356
Stoves.....	33,338	36	120.02	.4670	53	176.69	.4157
Tin articles.....	21,492	46	94.26	.3698	68	139.35	.3102
Woodenware.....	30,950	45	139.28	.5119	68	210.46	.4687

No protestant appeared at the hearing in opposition to the proposed increases.

We consider that the situation with respect to group 9 is somewhat different from that of groups 6, 7, and 8. When the original error was alleged to have been made in reducing the western Oklahoma tariffs from 67 cents to 60 cents, it is not understood that the group 9 points were so reduced; they have always carried a 67-cent rate. If it is now proposed to unify the rates over this section, no exception should be made prescribing higher rates for group 9. We think the carriers have not justified the proposed increase in this instance, and the items in the tariffs under suspension proposing increased rates on furniture to group 9 points in Oklahoma will be ordered to be canceled. We find that the carriers have justified the proposed increased

rates on furniture to groups 6, 7, and 8, and the order to be entered will vacate the suspension of the rates to those points.

RUN-BY AND SETBACK SWITCHING OF GRAIN.

The proposed rule here in question, which appears in tariffs filed by the Chicago & North Western Railway Company, covering switching charges at Chicago, Ill., Peoria, Ill., and Milwaukee, Wis., reads as follows:

Where cars are loaded with grain or seeds at elevators or warehouses and set back to elevators or warehouses on account of errors in grade, or for any other cause for which carrier is not responsible, a charge of \$2 per car will be assessed, this charge to include switching and re Coopering.

When cars loaded with grain or seeds set at elevators or warehouses, or run by for inspection, or on account of being out of condition, or for any other cause beyond the carrier's control, are set back, the charge of \$2 per car will be assessed, this charge to include switching and re Coopering.

The Chicago & North Western filed a tariff containing a similar item covering switching at Omaha, Nebr., and Council Bluffs, Iowa, but that item was not suspended. The carrier, however, to prevent discrimination canceled the proposed charge as to those points until the reasonableness of the proposed charge at Chicago, Peoria, and Milwaukee could be determined. The only person who appeared at the hearing to oppose the proposed rule was a representative of the Omaha grain exchange.

After a car is loaded with outbound grain at an elevator or warehouse it is placed on a storage track for inspection, and if after inspection it is set back to the elevator or warehouse for unloading, because of an error in grade, or for some other cause, there has been an additional movement of the car for which the present tariffs of the respondent do not provide a charge. If unloaded, at least one grain door is destroyed, and there is often other injury to the co Coopering, all of which must be replaced at the expense of the carrier before the car can be again loaded with grain. This expense, however, varies so greatly in different cases that it would not be feasible to vary the charge in each case according to the expense incurred. The proposed charge by the terms of the rule covers both the switching and the re Coopering required.

In the case of grain which comes into a terminal market the loaded car is first placed in the inspection yards of the carrier, and is graded by the inspectors from a sample which finally reaches the board of trade, where the grain is sold upon the grade thus fixed. The grain is then moved to the elevator or warehouse of the buyer, but there may be a dispute between buyer and seller as to grade, and in that event the car is run by the elevator or warehouse and placed

on the storage tracks of the carrier to await reinspection. If the car is then set back to the elevator or warehouse the respondent, under its tariffs now in effect, makes no charge for that service.

It is conceded that the carrier ought to be permitted to make a separate charge for the additional service described both in the case of the inbound grain and the outbound grain, but it is insisted that the amount proposed is too great as compared with the charge made for other switching services.

The extent of the additional movement required varies according to the distance of the storage tracks from the elevator or warehouse at which the cars are to be loaded or unloaded, and that distance varies at the different markets and at different elevators. It appears that at Kansas City the movement is for a greater distance in some cases than that required for interline switching for which a charge of \$5 is made, and it is shown that conditions at the points here involved are substantially the same as at Kansas City, where a charge of \$2 is made. At Omaha the entire movement varies from one-fourth of a mile to one mile and a half.

This is an additional service for which the line-haul carrier may reasonably exact an additional charge.

The respondents have placed in the record for comparison switching charges which vary from \$1.50 to \$3 per car for movements similar in nature and extent to the movements here in question.

The jurisdiction of the Commission over the charge for the switching and rehooking of cars loaded with outbound grain is questioned upon the ground that the movement is strictly an intrastate movement, but in some cases, particularly in the case of transit grain, it is part of an interstate movement, and our findings can apply only when that is the case.

From the facts of record we conclude and find that the proposed charge of \$2 is just and reasonable, and has been justified by the respondent. An order vacating the suspension will be entered.

TRANSIT CHARGES ON FRUITS AND VEGETABLES.

Tariffs under suspension provide for a charge of 1½ cents per 100 pounds with a minimum of \$5 per car for the storage in transit of apples in western trunk line committee and trans-Missouri freight bureau territories. Throughout these territories this service has previously been performed without additional charge. Some suspended items covering storage of potatoes, celery, and onions in transit are also involved. In certain tariffs applying in trans-Missouri freight bureau territory, where there already exists a charge for this service of 3 cents per 100 pounds upon potatoes and celery, a

minimum of \$5 per car is now proposed. In other tariffs where heretofore no charge has been made upon potatoes, onions, and celery it is sought to apply a charge of 1½ cents per 100 pounds with a minimum of \$5 per car.

The practice of storage of apples in transit has developed with the fruit-growing industry. In making shipments into southwestern territory, for instance, through St. Louis, apples might be stored there and reshipped on the combination of rates based on that city to destination. As the industry developed, through rates became more prevalent and storage was provided at points which were not basing points for the traffic. Shipments were made to these storage points, unloaded, stored, reloaded, and forwarded to destination at the balance of the through rate.

At the hearing it was claimed by the carriers that several elements of additional expense to them are involved in the storage-in-transit service. They maintain that two extra switching movements at the storage point, one inbound and one outbound, are made necessary, and that extra work in accounting is also involved through the readjustment of charges to conform to the proper proportions of the through rate, none of which burdens attach to a through shipment. An additional item of expense is the obligation to furnish refrigerator cars during certain seasons for the above products. They also point to the fact that by reason of the storage privilege shipments are very often routed via an intermediate storage point far off the direct line, thus lengthening the haul. Where they have heretofore rendered service of this character without additional charge they now propose to make a charge.

It was shown at the hearing that apples from Washington, Oregon, and north Pacific coast points are already subject to a transit charge of 5 cents per 100 pounds, and the respondents have given assurance that the proposed charges shall not be added to the present charges thereon. Subject to this understanding, there was no protest against the proposed charge on apples, the representative of the apple interests having stated at the hearing that the proposed charge was reasonable and that no opposition would be offered thereto.

No protestants appeared against the proposed charges on onions and celery.

A protestant on behalf of the potato shippers urged that the situation as to the storage of potatoes was different from that on apples, but such distinctions as he sought to make chiefly concerned the handling of the product by the shippers.

It does not seem to us that there is a material difference, from the standpoint of the additional burden upon the carrier, between the storage of apples and the storage of potatoes. The question for us

to decide is whether the increased charge is justified by the service performed. We are of opinion that it is.

Upon the facts of record we find that the respondents have justified the proposed charges, including the minimum therein provided, for the storage in transit of apples, potatoes, onions, and celery, and the order to be entered herein will vacate the suspension of these schedules. It is expected, however, that wherever necessary the suspended tariffs will be amended in such manner as not to subject Pacific coast apples, hereinabove referred to, to any transit charge in addition to the charge of 5 cents per 100 pounds to which they are now subject.

MISCELLANEOUS COMMODITIES.

Lumber.—The increases herein proposed are in general 1 cent per 100 pounds in carloads from Chicago and St. Louis and common points to Missouri River crossings. There are also other increases proposed in the same general territory ranging from one-half cent to 3½ cents, but except as hereinafter indicated no attempt was made to justify the proposed rates to the extent that they exceed the present rates by more than 1 cent.

In justification of the proposed increase of 1 cent the respondents have submitted a statement comparing the proposed new rates on lumber with rates upon other kinds of building materials, showing as to each material the earnings per car, per car-mile, and per ton-mile for given distances; likewise, the value per ton of the commodity transported. The respondents also stated that no question of discrimination is involved or any disturbance of relative rate adjustments. No one appeared at the hearing to oppose the proposed increase.

Under the circumstances as above set forth the Commission is of opinion that the respondents, except as hereinafter noted, have justified the proposed increased rates on lumber to the extent of 1 cent in excess of the present rates, and subject to such exception an order vacating the suspension of such of the suspended schedules as name rates which do not exceed the present rates by more than 1 cent will be entered. The cancellation of other schedules not hereinafter approved will be required.

The Missouri, Kansas & Texas urges various reasons for proposed increases ranging from one-fourth cent to 2½ cents per 100 pounds, which tend to justify the proposed rates. The proposed readjustment also includes some reductions. No objection has been offered to those rates, which appear to be in the nature of subsidiary alignments, and upon the record we find they have been justified, and they will be permitted to take effect.

The Chicago, Rock Island & Pacific proposed certain increases in its rates on lumber between stations in Louisiana. These are mileage

rates, and the proposed increases vary. It was developed at the hearing that the proposed rates are state rates and are filed with the Interstate Commerce Commission only as a basis for combinations for interstate traffic where no through rate is in effect. We think the proposed rates have been justified, and should be permitted to take effect.

The Morgan's Louisiana & Texas Railroad & Steamship Company proposes to cancel the interstate application of certain intrastate rates on lumber between points in Louisiana which would result in the increase of existing interstate rates. No attempt was made at the hearing to justify the proposed cancellation. We are of opinion that the proposed increased rates have not been justified, and the respondents will be required to cancel the proposed cancellation.

The Trinity & Brazos Valley proposes to cancel a commodity rate of 24 cents applying from Jackson, Tex., to St. Louis, Mo., leaving a combination rate to apply, which would result in an increase of the rate. No attempt was made to justify the proposed increased rate, and the respondent will be required to cancel the suspended item.

Lime.—The suspended items cover rates on lime from the twin cities to certain points in Iowa, Missouri, and Nebraska. The principal change is the cancellation of the commodity carload rates and the substitution of rates upon a class C basis. There is no lime manufactured in the twin cities and no carload movement therefrom. The proposed new adjustment will involve increases ranging from 1 cent to 5 cents and reductions ranging from 1 cent to 4 cents. Several exhibits were submitted by the respondent, including a statement of the proposed changes and a table of rates upon the new basis, showing comparisons with rates from Chicago to equidistant points. No protestant against the proposed new rates has appeared.

Under the circumstances as above set forth the Commission is of opinion that the respondents have justified the suspended rates on lime, and an order will be issued vacating the suspension thereof.

Brooms.—The tariffs under suspension provide for an increase of 5 cents per 100 pounds in the rates on brooms to Colorado common points from points in western trunk line territory, the Missouri River cities, manufacturing points in Kansas, Nebraska, and Oklahoma, and Wichita Falls and Amarillo, Tex.

The respondents refer to the Commission's report in *Broom Rates to Colorado Points*, 28 I. C. C., 310, wherein the present rates were authorized, which are 10 cents more than the rates on broom corn. This 10-cent difference they now seek to increase to 15 cents. In support of the proposed increases the respondents submit a table making comparisons of the rates on brooms and broom corn from the principal manufacturing points in the territory involved herein, to

Omaha, St. Louis, Chicago, the twin cities, and Peoria, Ill. This statement shows that in the majority of cases the rate on brooms exceeds that on broom corn from 27 cents to 44½ cents as against the proposed difference of 15 cents to Colorado common points. The respondents also direct attention to the greater value of brooms than of broom corn, which is \$198 to \$438 per ton as against \$35 to \$90 per ton, as well as to the lighter loading of brooms as compared with broom corn. The proposed increase was not contested at the hearing.

Under the circumstances shown of record we are of opinion that the respondents have justified the proposed increased rates on brooms herein referred to, and an order will be entered vacating the suspension thereof.

Harness and saddlery to Oklahoma points.—Certain increases in the rates on harness and saddlery from Texas points to points in Oklahoma are proposed in tariffs under suspension herein, which cancel commodity rates, leaving class rates applicable. The respondents state that the issues with respect to these proposed increases are the same as those involved in *Harness to Oklahoma*, now pending, and request that they be disposed of in connection with that docket. This request will be granted, and the tariffs carrying cancellations under suspension herein will be ordered to be canceled, but without prejudice to whatever future disposition may be made by the Commission regarding these rates when a decision is announced in that proceeding.

OTHER ITEMS.

In certain cases the carriers have proposed to cancel existing rates, and these cancellations are under suspension in this proceeding. In some of these cases it was developed that there had been no movement for a long period of years of the commodity covered by the suspended tariff, and the object of the cancellation is chiefly to remove a possible comparison with rates on other commodities.

A suspended tariff of the Wisconsin & Michigan Railroad provides for an increase of one-fourth of a cent per 100 pounds on saw logs, and as the resulting rate was shown upon the hearing to be less than has been approved by the Commission in analogous cases, and no protestant appeared, the rate will be allowed to become effective.

There are many other suspended items which were not contested at the hearing, but as to which the carriers made statements for the record explaining the purpose of the proposed changes in their tariffs. The reasons given for these changes may be classified as follows:

(a) To prevent discrimination; (b) to eliminate meaningless provisions; (c) to correct typographical errors; (d) to remove items

which have become useless because there is no movement; (e) to remove various inconsistencies.

The order to be entered herein will vacate the suspension as to these various items.

A check of all the suspended items with the record shows that some of those items were not referred to at the hearing, but it seems, from an examination of the tariffs, that such items are in most cases relatively unimportant and as to such of them as have not been specifically disposed of hereinbefore we will vacate the orders of suspension.

The decision of the Commission in the *Western Rate Advance Case* is conclusive as to the reasonableness of some of the suspended items, and as it was announced by the respondents at the hearing that those items must stand or fall by what might finally be decided in that case, which was then pending on petition for rehearing, the respondents will be required to cancel such of those items as name rates which are similar to rates condemned in the *Western Rate Advance Case*, and the order of suspension will be vacated as to such of those items as name rates which are similar to rates which were found to be justified in that case.

It was also stated by respondents at the hearing that they would not attempt to justify certain of the suspended items, and that they would make application to the Commission for permission to cancel the tariffs containing such items. They will be given until December 29, 1915, within which to cancel these items, and authority to make such cancellation, effective upon one day's notice to the Commission and the public, is hereby granted; upon failure voluntarily to make such cancellations within that time an order will be entered requiring same.

INVESTIGATION AND SUSPENSION DOCKET No. 604.¹
OFFICIAL CLASSIFICATION RATINGS.

Submitted October 13, 1915. Decided December 14, 1915.

Upon consideration of objections to proposed changes in classification ratings on certain commodities named in supplement No. 9 to official classification No. 42, and certain other tariffs, and of the facts, circumstances, and conditions shown of record in relation thereto; *Held:*

1. Proposed higher ratings on beer, beer tonic, ale, and porter in carloads and less than carloads; on nonalcoholic beverages in carloads and less than carloads; on tobacco cuttings or scraps and tobacco siftings or sweepings in less than carloads; on plug or twist tobacco in carloads and less than carloads; on grain and grain products in less than carloads; on animal, poultry, and pigeon feed, not medicated, in less than carloads; and on rags, waste paper, and other paper makers' fibers in less than carloads, not justified.
2. Proposed higher ratings on beer barrels and certain other cooperage, both new and old, in carloads and less than carloads; and on old bottles in carloads and less than carloads and old bottle carriers in carloads, justified.
3. Proposed establishment of carload and less-than-carload ratings on leaf tobacco in lieu of any-quantity rating not justified.
4. Proposed increased estimated weights of flour in barrels and half barrels justified.

E. S. Ballard and *W. W. Collin, jr.*, for respondents.

L. M. Walter, J. S. Burchmore, Isaac Born, and F. B. Cronk for shippers of beer, old beer cooperage, old bottles, and old bottle carriers.

C. S. Keene, F. B. James, R. L. De Long, J. J. Holmes, R. C. Jones, C. N. Kincaid, F. M. Elkinton, and H. W. Knoche for shippers of tobacco.

J. R. Walker, George B. Webster, and J. A. Morgan for shippers of new cooperage.

G. W. Witte for shippers of nonalcoholic beverages.

Jeffery & Campbell for shippers of grain and grain products.

F. B. James for shippers of rags, waste paper, and paper makers' fibers.

G. M. Freer for Cincinnati Chamber of Commerce.

E. S. Goodman for Richmond Chamber of Commerce.

H. J. Horan for Commercial Exchange of Philadelphia.

¹ This proceeding also embraces Investigation and Suspension Docket No. 682, *Animal Food Ratings*.

E. E. Bockstedt for Syracuse Chamber of Commerce.

J. G. Duffy for Utica Chamber of Commerce.

F. E. Williamson for Buffalo Chamber of Commerce.

A. F. Versen for Business Men's League of St. Louis.

J. C. Lincoln for Merchants Association of New York.

C. B. Sudborough for respondents in Investigation and Suspension Docket No. 682.

H. J. Hansner for Merchants' Exchange of St. Louis.

E. G. Loser for the Albert Dickinson Company of Chicago.

REPORT OF THE COMMISSION.

HALL, *Commissioner*:

By schedules contained in supplement No. 9 to official classification No. 42, filed to become effective March 20, 1915, the carriers in official classification territory proposed higher ratings and consequent increased rates on various commodities. Upon protests by shippers the operation of the new schedules was suspended until January 18, 1916, pending investigation. Like schedules contained in copies of said supplement, filed under separate tariff numbers by certain traction companies, were embraced in the orders of suspension. To some of the proposed ratings no objection was made. This report deals only with the ratings on commodities named in the protests and hereinafter discussed.

The Baltimore & Ohio Railroad and other railroads, and agents Boyd, Fulton, and Morris, filed, to become effective July 18, 1915, tariffs containing schedules stating increased ratings on animal, poultry, and pigeon feed, not medicated or condimental, in less-than-carload quantities, when not less than 75 per cent of the ingredients thereof consist of grain, grain products, or by-products of grain. No specific rating upon such feed is published in the official classification. The present rating in official classification territory is fifth class, published by the carriers and agents referred to as an exception to the classification. The new schedules proposed to increase this rating to fourth class. By appropriate orders the Commission suspended the operation of these schedules until May 15, 1916, in Investigation and Suspension Docket No. 682, *Animal Feed Ratings*.

At the hearing it was agreed that the classification rating on such feed should be the same as on grain and grain products, and that the decision reached in Investigation and Suspension Docket No. 604 with regard to the latter commodities should be determinative of the rating for the former. All parties joined in a request that No. 682 be consolidated for decision with No. 604. This has been done.

The commodities to which our attention has been specifically directed by the protests are stated herein in the order of their consideration, together with the present and proposed ratings thereon:

Beer.

	L. C. L.		C. L.	
	Present.	Proposed.	Present.	Proposed.
Ale and beer, n. o. s., beer tonic and porter:				
In bottles, in open carriers, less than carload, not taken.....			5	6
In bottles, packed in pulpboard boxes, crated.....	3	R 25	5	4
In bottles, well packed in boxes or barrels.....	3	R 25	5	4
In wooden barrels.....	3	R 25	5	4
In steel half barrels.....	(¹)	R 25	(¹)	4

¹ No specific rating at present.

The present ratings on beer, including beer tonic, porter, and ale, are third class in less than carloads and fifth class in carloads. The proposed changes are to rule 25 in less than carloads and to fourth class in carloads. Rule 25 provides for a rating 15 per cent below second class, but not lower than third class. The changes proposed, if allowed to become effective, would mean an increase in freight charges over the present rates of about 18.5 per cent on carload traffic and about 4 per cent on less-than-carload traffic.

The distances, the present and proposed rates on beer in carloads from and to the following representative points, and the percentages of increase are shown in the following table:

From—	To—	Distance.	Present.	Proposed.	Percent- age of in- crease.
		Miles.			
Chicago, Ill.....	Michigan City, Ind.....	56	7.9	10.5	33
New York, N. Y.....	Trenton, N. J.....	66	8.4	9.5	13
Do.....	New Haven, Conn.....	76	12.0	15.0	25
Chicago, Ill.....	Lorainport, Ind.....	117	10.5	13.7	30
Do.....	Fort Wayne, Ind.....	148	11.0	14.2	29
New York, N. Y.....	Wilkes-Barre, Pa.....	164	15.8	17.9	13
Do.....	Providence, R. I.....	190	15.0	20.0	33
Chicago, Ill.....	Toledo, Ohio.....	248	13.7	16.8	23
New York, N. Y.....	Elmira, N. Y.....	265	15.8	18.9	20
Chicago, Ill.....	Cleveland, Ohio.....	357	15.8	18.9	20
New York, N. Y.....	Rochester, N. Y.....	373	15.8	18.9	20
Chicago, Ill.....	Pittsburgh, Pa.....	468	18.9	22.1	17
Average.....		211	13.4	16.4	22

In some instances the proposed increased rating of rule 25 on beer in less-than-carload quantities would not effect an increase in the rate for the reason that 85 per cent of second class is lower than third class.

The distances, the present and proposed rates on beer in less than carloads from and to the following representative points, and the percentages of increase, are shown in the following table:

From—	To—	Distance.	Present rates (third class).	Proposed rates (rule 25).	Percent- age of increase.
		<i>Miles.</i>			
Chicago, Ill.....	Michigan City, Ind.....	56	12.6	12.6	0.0
Do.....	Logansport, Ind.....	117	20.5	20.6	0.5
New York, N. Y.....	Trenton, N. J.....	66	13.7	14.3	4.0
Do.....	Hartford, Conn.....	112	20.0	20.0	0.0

The present ratings have been in effect without change since 1887, when official classification No. 1 was published. The carload minimum has varied, but at no time has it been less than 24,000 pounds or greater than 30,000 pounds. Since January 1, 1908, the minimum has been 28,000 pounds, and no change therein is now proposed. An increase in the minimum carload weight on beer was under consideration in 1914, but was abandoned upon objections by many shippers.

The carriers contend that the transportation of beer is an expensive service because of the character of equipment required, the small proportion of paying load to gross weight, the ice and protective materials hauled without charge, the low minimum weight, and the relatively large proportion of return empty movement of refrigerator cars.

The protestants say that the recent increase of freight rates in official classification territory was made without objection from beer shippers, and without thought or knowledge on their part that further increases would be sought. They earnestly contend that the present freight charges are all that the traffic will bear.

We pass to a consideration of the evidence.

Carload shipments are usually made in refrigerator cars, although box cars are used occasionally by some brewers, especially for short hauls. Since 1887 refrigerator cars have increased on the average about 38 per cent in weight and 51 per cent in capacity; box cars about 55 per cent in weight and 100 per cent in capacity. Such increase would ordinarily be reflected in increase of minimum weights. But, as a rule, old refrigerator cars, smaller and lighter than those of modern type, and thus not adapted to transportation of more perishable commodities, are supplied to beer shippers. The average tare weight of the refrigerator cars used for the shipments set forth in exhibits introduced by certain shippers was about 37,000 pounds as against 48,000 pounds for those of modern type. Exhibits introduced by respondents covering a large number of shipments showed an average tare weight of about 45,500 pounds.

It appears that the paying load was an average of 41.5 per cent of the gross weight on 244 cars moving in this territory. Ice in con-

siderable quantity for the protection of draft beer in summer, and in winter, hay, straw, sawdust, or other protective materials, not exceeding 3,000 pounds per car, are hauled without additional charge. The evidence shows no material change of late years in methods of furnishing protection except that some shippers now use heaters in winter. The weight hauled without additional charge in such case is much less.

The empty return movement of refrigerator cars is said by the carriers to be relatively large, but there is no definite showing of the percentage. The record indicates that when the return loading is confined to empty beer containers the empty movement is about 37.5 per cent of the loaded movement. The extent of return loading with other commodities is not shown.

The value of a carload of draft beer ranges from \$400 to \$500. That of bottled beer is about \$800.

There is but little risk in the transportation of beer in carloads. It was testified by a number of witnesses that loss and damage claims are small. These witnesses stated that for the year ended September 30, 1914, such claims amounted to less than 1 per cent of the freight charges paid by them.

Beer moves in official classification territory almost entirely under class rates. In the western and southern classifications the ratings are substantially the same as in the official, but the movement is largely under commodity rates lower than the class rates.

The protestants are chiefly manufacturers and shippers of beer. They show that there is a large and continuous movement of the commodity. There are 1,397 brewers in the United States, 1,010 of whom operate in official classification territory. Of this number, 640 paid in freight charges on beer, beer containers, and beer supplies for the year ended September 30, 1914, over \$23,000,000.

Exhibits were filed by a number of the larger plants based upon all carload and less-than-carload shipments made by them during the year ended September 30, 1914. The data thus furnished as to carload shipments are tabulated as follows:

Data based upon 45,312 carload shipments by 56 brewers.

Average earnings—	Per car.	Per ton-mile.	Per car-mile.
Under rates charged.....	\$45.68	Mills. 9.36	Cents. 14.96
Under present rates, established since decision in <i>The Fire Per Cent Case</i> , per cent.....	47.95	9.73	15.71
Under rates which would result from proposed rating.....	56.78	11.63	18.59
Average carload weight.....	pounds..		31,963
Average length of haul.....	miles..		305.4
Proposed increase over present rates.....	per cent..		18.34
Proposed increase over rates charged.....	do.....		24.3
87 I. C. C.			

The less-than-carload movement of beer is large, although not so large as in carloads. The data above mentioned as to such shipments are here tabulated:

Data based upon 104,007 less-than-carload shipments by 45 brewers.

Average weight of shipments	_____pounds	1, 917
Average length of haul	_____miles	65. 7
Average charge per shipment	_____	\$2. 88
Average charge per shipment on such shipments under present rates	_____	\$3. 04
Average charge per shipment on such shipments under rates resulting from proposed rating	_____	\$3. 14
Average increase over present rates, about	_____per cent	4
Average increase over rates charged	_____do	9. 24

The shipments on which the foregoing tables are based are said to be representative of conditions throughout official classification territory.

In many respects the considerations already discussed apply equally to both kinds of shipments. Most of the evidence of record relates to carload shipments, comparatively little being devoted to less-than-carload shipments by either respondents or protestants.

It was admitted of record by the chairman of the Official Classification Committee that as a general proposition, without regard to earnings by the carriers, more articles akin to beer are rated fifth class than fourth class when shipped in carloads.

Other matters have been urged upon our attention in connection with this branch of the case, but we do not think that further discussion would serve any useful purpose. Upon all the facts of record, we find that the proposed increased ratings on beer have not been justified.

Nonalcoholic beverages.

Articles.	L. C. L.		C. L.	
	Present.	Proposed.	Present.	Proposed.
Beverages, flavored or phosphated, not otherwise indexed by name (beverages such as ginger ale, birch beer, root beer, or sarsaparilla), not including extracts, sirups, nor alcoholic liquors:				
In glass or earthenware, in slatted carriers with solid tops..	3	R 25	.....	.....
In glass or earthenware, packed in barrels or boxes.....	3	R 25	.....	.....
In bulk in barrels.....	3	R 25	.....	.....
In packages named, or in carriers without tops, straight or mixed carload .....	.....	.....	5	4

It is proposed to increase the less-than-carload rating on ginger ale, birch beer, root beer, or sarsaparilla from third class to rule 25, and the carload rating from fifth class to fourth class. The proposed ratings would mean an increase in freight charges over the rates

now in effect of about 17 per cent on carload shipments and 10 per cent on less-than-carload shipments.

The company which protested against these proposed increases is located at Sheboygan, Wis. The distances and the present and proposed rates from that point to certain representative points are shown in the following table:

To—	Distance.	C. L.		L. C. L.	
		Present.	Proposed.	Present.	Proposed.
	Miles.				
Michigan City, Ind.....	194	14.2	17.9	26.8	28.6
Indianapolis, Ind.....	321	14.2	17.9	26.8	28.6
Cincinnati, Ohio.....	423	17.9	21.0	30.5	34.9
Toledo, Ohio.....	¹ 396	15.8	20.0	28.9	32.1
Columbus, Ohio.....	¹ 528	17.9	22.1	31.5	35.7

¹ Across lake.

The average increase in the minimum car earnings to the points above shown under the minimum of 30,000 pounds would be about \$11 per car.

In official classification No. 1 ginger ale was rated the same as beer. As other nonalcoholic beverages were placed on the market they were usually provided for in the same manner. A carload minimum of 30,000 pounds was established about 1900 and is still in effect. In other respects the ratings have been the same as on beer since 1887.

The chairman of the Official Classification Committee stated that, except for the difference in carload minimum, nonalcoholic beverages should be rated the same as beer. These beverages are sold in competition with the light beers. Certain brands of ginger ale are shipped in carload quantities to many parts of the country.

Protestants insist that freight charges on ginger ale, birch beer, root beer, and sarsaparilla should be no higher than on mineral waters. The rating is now the same, but no change is proposed in that on mineral waters. All are packed in the same manner and shipped in the same kind of bottles. Ginger ale and mineral waters are frequently shipped in mixed carloads. Under the regulations governing such shipments the entire carload, including the mineral water, would take the increased rate resulting from the proposed rating on ginger ale.

Comparisons with other commodities taking the same class show that the articles under consideration stand on a relatively high basis as revenue producers at the present ratings. They move in box cars, except in winter, when refrigerator cars are used for protection against frost. The principal shipping season is during the summer months. There is little loss or damage in transit.

Upon the record we find that the proposed increased ratings on non-alcoholic beverages have not been justified.

Beer barrels and other cooperage.

Articles.	L. C. L.		C. L.	
	Present.	Proposed.	Present.	Proposed.
Barrels:				
Ale or beer, wooden—				
New.....	3	3	6	5
Old.....	R 26	3	6	5
Oil, wooden: Old.....	R 26	R 25	4	4
N. o. s.: Wooden, tight, old.....	R 26	R 25	4	4
Half barrels:				
Ale or beer, wooden—				
New.....	3	3	6	5
Old.....	R 26	3	6	5
Oil, wooden: Old.....	R 26	R 25	4	4
N. o. s.: Wooden, tight, old.....	R 26	R 25	4	4
Quarter barrels:				
Ale or beer, wooden—				
New.....	3	3	6	5
Old.....	R 26	3	6	5
Sixth barrels:				
Ale or beer, wooden—				
New.....	3	3	6	5
Old.....	R 26	3	6	5
Eighth barrels:				
Ale or beer, wooden—				
New.....	3	3	6	5
Old.....	R 26	3	6	5
Hogsheads, wooden:				
Ale or beer—				
New.....	3	3	6	5
Old.....	R 26	3	6	5

The most important of the cooperage items under protest are those embracing old wooden beer containers. These are designated as hogsheads, barrels, half barrels, quarter barrels, sixth barrels, and eighth barrels. The same item includes new beer cooperage under like designation, old wooden oil barrels and half barrels, and barrels and half barrels, "n. o. s., wooden, tight, old."

The carriers propose to increase the carload rating on beer cooperage, old and new, from sixth class to fifth class. The less-than-carload rating on old beer cooperage was originally fourth class and so continued until March 10, 1900, when it was raised to rule 26, i. e., 20 per cent below third class but not lower than fourth class, where it has since remained. It is now proposed to increase this rating to third class, the rating applicable to new cooperage in less than carloads from the beginning.

An exhibit was filed covering 19,974 carloads of empty beer packages of all kinds forwarded during the year ended September 30, 1914, which shows that the proposed carload rating would result in an average increase of 21 per cent. A similar exhibit was filed covering 21,857 less-than-carload shipments of empty beer packages of all kinds which shows that the proposed rating would result in an average increase of 20 per cent.

The distances, the present and proposed rates on old beer cooperage, in carloads, from and to the following representative points, and the percentages of increase are shown in the following table:

From—	To—	Distance.	Present rates (sixth class).	Proposed rates (fifth class).	Percentage of increase.
		<i>Miles.</i>			
Michigan City, Ind.....	Chicago, Ill.....	56	6.8	7.9	16
Trenton, N. J.....	New York, N. Y.....	66	7.4	8.4	14
New Haven, Conn.....	do.....	76	7.0	9.0	29
Logansport, Ind.....	Chicago, Ill.....	117	8.4	10.0	19
Fort Wayne, Ind.....	do.....	148	8.9	11.0	24
Wilkes-Barre, Pa.....	New York, N. Y.....	164	12.6	15.8	26
Providence, R. I.....	do.....	190	10.0	12.0	20
Toledo, Ohio.....	Chicago, Ill.....	248	10.5	13.7	30
Elmira, N. Y.....	New York, N. Y.....	265	13.7	15.8	15
Cleveland, Ohio.....	Chicago, Ill.....	357	12.8	15.9	24
Rochester, N. Y.....	New York, N. Y.....	373	13.7	15.8	15
Pittsburgh, Pa.....	Chicago, Ill.....	468	15.8	18.9	20

The distances, the present and proposed rates on old beer cooperage, less than carloads, from and to the following representative points, and the percentages of increase are shown in the following table:

From—	To—	Distance.	Present rates (rule 26).	Proposed.	Percentage of increase.
		<i>Miles.</i>			
Michigan City, Ind.....	Chicago, Ill.....	56	10.5	12.6	20
Logansport, Ind.....	do.....	117	16.4	20.5	25
Trenton, N. J.....	New York, N. Y.....	66	11.0	13.7	25
New Haven, Conn.....	do.....	76	12.0	15.0	25

The carriers contend that the earnings on old beer cooperage are inadequate under its existing rating. It was explained by one witness that the rating on returned empty beer containers was originally made lower than on new cooperage under the belief that the return movement would be over the line which had already hauled them with their contents on the beer rates, but that such restriction of the return movement had been found impracticable and was no longer attempted.

The different sizes of old beer containers generally move in mixed carloads. The weight density of the different sizes varies, that of the smaller containers being considerably in excess of that of the larger. The lower carload minimum on old beer cooperage was established in order to permit of return movement in refrigerator cars, which are of smaller loading capacity than box cars. An exhibit introduced by respondents shows that the average net weight of 138 carload shipments of old cooperage returned in refrigerator cars to St. Louis, Milwaukee, and other points was 20,816 pounds.

ST. L. C. C.

Exhibits filed by the brewers show that for a period of 12 months ended September 30, 1914, carload shipments of returned empty beer containers of all kinds by 85 representative brewers in official classification territory produced ton-mile earnings of about 7.5 mills and car-mile earnings of about 7 cents.

Old wooden oil barrels and half barrels and old wooden tight barrels and half barrels, n. o. s., have a less-than-carload rating of rule 26, which it is proposed to increase to rule 25. The present carload rating is fourth class, and no change in that is proposed.

Of these containers oil barrels are perhaps the more important commercially, but what is here said applies to tight barrels as well. Respondents show, among other things, that the weight density of wooden white lead kegs, which are manufactured from the same material as wooden oil barrels and wooden tight barrels, n. o. s., is greater than that of the barrels, and this is reflected in the carload minimum, which is higher on the kegs than on the barrels. The less-than-carload rating on new wooden oil barrels and new wooden tight barrels, n. o. s., is first class. It was further shown that there are but few articles in official classification rated as low as rule 26 in less than carloads when the carload minimum is less than 20,000 pounds.

The present and proposed rates on old wooden barrels, less than carloads, from the points named to New York and the percentages of increase are shown in the following table:

From—	Distance.	Present rates.	Proposed rates.	Percent- age of increase.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	
Chicago, Ill.....	912	42.0	58.1	38
Louisville, Ky.....	867	42.0	58.1	38
St. Louis, Mo.....	1,065	49.1	67.9	38
Cincinnati, Ohio.....	757	36.6	50.5	38

Objections to the proposed increased rating on new beer cooperage were made for the most part by manufacturers located in the middle western states. The present and proposed rates from the points named, which are large manufacturing points, to New York City, and the percentages of increase, are shown in the following table:

From—	Distance.	Present rates.	Proposed rates.	Percent- age of increase.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	
Chicago, Ill.....	912	26.3	31.5	20
Louisville, Ky.....	867	26.3	31.5	20
St. Louis, Mo.....	1,065	30.8	36.9	20
Cincinnati, Ohio.....	757	22.9	27.4	20

There are few shipments of the full-size barrel in official classification territory, and they do not usually load above 20,000 pounds. The movement is chiefly of half barrels and the smaller sizes, which load considerably above that weight. From exhibits of record it appears that the average loading ranges from about 23,000 to 45,000 pounds, with a general average of about 31,000 pounds. There is a large movement of new cooperage from Chicago to New York, a distance of 908 miles. At the present sixth-class carload rate of 26.3 cents per 100 pounds, based on an average loading of 31,000 pounds, the earnings would amount to 8.98 cents per car-mile.

Loss and damage claims in connection with this traffic are practically unknown.

The protestants, while strongly resisting the proposed increased rating, expressed willingness that the carload minimum be increased from 20,000 to 24,000 pounds. The chairman of the Official Classification Committee agreed that such an increase might reasonably be made.

The circumstances here shown do not disclose any transportation reason for requiring respondents to continue the present ratings on old or used cooperage.

Upon the facts of record our finding is that the proposed increased ratings on cooperage, new or old, have been justified.

OLD BOTTLES AND OLD BOTTLE CARRIERS.

The proposed increases in ratings on old bottles are from third class to rule 25 in less than carloads and from sixth class to fifth class in carloads, and on old bottle carriers from sixth class to fifth class in carloads, as shown in the following table:

Articles.	L. C. L.		C. L.	
	Present.	Proposed.	Present.	Proposed.
Bottles, ale, beer, beer tonic or porter, not cut glass, old, in barrels or casks, with or without heads.	3	R 25	6	5
Bottles, soda water, and similar "pop" bottles, old, in barrels, boxes, or carriers, with or without covers.	3	R 25	6	5
Bottles, n. o. s., old:				
In barrels, boxes, or carriers.	3	R 25		
In bags, barrels, boxes, or carriers.			6	5
Carriers: Bottle, other than k. d. flat or folded flat, empty, old, without bottles.	R 25	R 25	6	5

The present less-than-carload rating on new bottles is rule 25 and the carload rating is fifth class. The proposed ratings, should they become effective, would place old bottles in the same class as the new. The carload minimum on new bottles is 30,000 pounds, while on old

beer bottles the minimum is 16,000 pounds, and on old soda-water bottles and old bottles, n. o. s., 20,000 pounds. No change is proposed in these minimum weights.

Under the proposed rating of rule 25 on old bottles in less than carloads there would be no increase in some instances for the reason that 85 per cent of second class would be lower than third class. The proposed change in the carload rating is the same as that proposed on old beer cooperage in carloads and the resulting increased rates would be the same. From the table setting forth representative rates on old beer cooperage it appears that for the points shown therein the average distance is 210 miles, the present average sixth-class rate 10.6 cents, the proposed average fifth-class rate would be 12.8 cents, and the average increase would be 21 per cent.

The ratings on old empty bottles were originally fourth class in less than carloads and fifth class in carloads, as against third class in less than carloads and fifth class in carloads for new bottles. The present ratings are rule 25 and fifth class on new bottles and third class and sixth class on old.

The present ratings and minimum weights on old beer bottles are said to be based on the returned carrier principle. The carriers endeavored for a time to secure the return of the empty bottles over the line that had the outbound haul, but this was abandoned, and there has grown up a regular business of collecting and shipping old bottles.

Respondents contend that the returned carrier principle, in so far as still in practice, is a survival from the days of unscientific rate making, and that the present tendency is to disregard that principle and to establish in lieu thereof a practice which will require each and every rating and rate to stand upon its own basis. There is much force in the contention stated as a general proposition. But the Commission is concerned in such a proceeding as this with the justness, fairness, and reasonableness of the proposed classification rating as applied to actual shipments, rather than with the theory upon which such rating is based. Respondents have justified the proposed increased ratings on old empty bottles.

Old bottle carriers are a commodity closely related to old bottles themselves, and so far as the record shows should be treated in the same manner. The same increase is proposed in the carload rating, and what has been said with respect to old bottles in carloads is equally applicable to the carriers. No change is proposed in the less-than-carload rating. We are of opinion that respondents have justified the proposed carload rating on old bottle carriers.

TOBACCO.

The changes proposed in the tobacco schedules are shown in the following table:

Articles.	L. C. L.		C. L.	
	Present.	Proposed.	Present.	Proposed.
Tobacco:				
Unmanufactured—				
Leaf—				
In bulk in barrels or boxes.....	4	3		
In bulk in barrels or boxes, carload, minimum weight 20,000 pounds (subject to rule 27).....				4
In bulk in hogsheads.....	4	3		
In bulk in hogsheads, carload, minimum weight 18,000 pounds (subject to rule 27).....				4
Cuttings or scraps: In bulk in barrels, boxes, or hogsheads.....	4	3		
Siftings or sweepings: In bulk in barrels, boxes, or hogsheads.....	4	3		
Manufactured—				
Plug or twist—				
In boxes, measures, or pails, in boxes or crates, or two or more strapped together.....	3	R 25		
In packages named, carload, minimum weight 20,000 pounds.....			4	R 26

The carriers propose to establish in lieu of the present any-quantity rating of fourth class on leaf tobacco in barrels, boxes, or hogsheads, a carload rating of fourth class, at minimum weights of 20,000 pounds in barrels or boxes and 18,000 pounds in hogsheads, subject to rule 27, which provides graduated minima for cars above a certain length, and a less-than-carload rating of third class. Shipments are sometimes made in bags, bales, bundles, or crates, under provisions not involved in this proceeding.

It is proposed to increase the present less-than-carload rating on tobacco cuttings or scraps and on tobacco siftings or sweepings in barrels, boxes, or hogsheads from fourth class to third class. On each of these commodities there is now a carload rating of fourth class, as to which no change is proposed.

On plug or twist tobacco in boxes, measures, or pails, packed in boxes or crates, or two or more strapped together, it is proposed to increase the present less-than-carload rating from third class to rule 25, and the present carload rating from fourth class to rule 26.

(a) LEAF TOBACCO.

The present controversy as it relates to unmanufactured tobacco concerns chiefly leaf tobacco in hogsheads, known as "hogshhead tobacco," or in barrels or boxes, referred to as "case tobacco," which together constitute the bulk of the movement of unmanufactured tobacco. Leaf tobacco for cigar making is produced chiefly in official

classification territory, and, on account of its nature and the method of its curing, is usually shipped in boxes. For tobacco other than cigar leaf the hogshead has been the standard container from the beginning of the industry, and about 85 per cent of the movement is in such containers. Storage warehouses are constructed and arranged to accommodate hogsheads.

Leaf tobacco is perhaps the most important item in the entire tobacco schedule. When in hogsheads, barrels, or boxes, it has moved in official classification territory under an any-quantity rating of fourth class since 1887, when official classification No. 1 was published.

Respondents say that any-quantity ratings are unusual, there being few in the official classification; that leaf tobacco is not a commodity which, from a classification viewpoint, requires an any-quantity rating; and that the proposed change is in line with the general principle that traffic in less-than-carload lots should bear relatively higher transportation charges than when in carloads.

The carriers assume that if a carload rating on leaf tobacco were established the loading would be subject to greater care; that a general movement in carloads would be brought about; and that the carload would soon become recognized as the commercial unit.

Comparisons of the proposed ratings with carload and less-than-carload ratings on other products of the farm were submitted, and an elaborate exhibit illustrative of such comparisons was introduced to show that there are few products of the farm rated lower than second class in less than carloads when the carload minimum is 24,000 pounds or less. The record indicates that tobacco ranks in value with other agricultural products which are accorded both carload and less-than-carload ratings. The evidence does not show that its value has increased materially in recent years.

The protestants are manufacturers and others engaged in various branches of the tobacco business. They contend that the reasons for an any-quantity rating on leaf tobacco arose from the methods of marketing that commodity and are as potent to-day as when the rating was first established. There has been no change in the character of the commodity or in the method of its shipment to cause any additional expense to the carriers. It is claimed that the tobacco business has adjusted itself to the present rating, and that a change to a carload rating as proposed would greatly disturb established commercial conditions, with consequent serious damage to the business.

It is estimated that the proposed ratings, if allowed to become effective, would mean an increase of from 43 to 47 per cent in freight charges on leaf tobacco in less-than-carload quantities. The distances

from Louisville, Ky., to the representative points shown, the present and proposed rates, and the percentages of increase are shown in the following table:

To—	Dis- tance.	Present rates (fourth class, any quan- tity).	Proposed rate (third class, L. C. L.).	Percent- age of increase.
	Miles.			
Indianapolis, Ind.	110	14.1	21.5	52
Hamilton, Ohio.....	140	15.2	22.1	45
Fort Wayne, Ind.....	233	16.8	24.6	46
Chicago, Ill.....	304	18.9	27.3	44
Detroit, Mich.....	384	21	29.9	42
Average.....	234	17.2	25.1	46

Such increases would be in addition to those following *The Five Per Cent Case*, 31 I. C. C., 351; 32 I. C. C., 325.

Tobacco is an important item of commerce. The production in the United States amounts to about 500,000 tons annually. It is grown chiefly in the southern states, only about one-fifth being produced in states covered by the official classification. It is estimated that under normal conditions about 43 per cent is annually exported. About 72 per cent of the remainder is handled in whole or in part by railroads in official classification territory, and they also share in the export movement.

The average tobacco farm contains about 4 acres, and produces on an average about 3,300 pounds a year. The tobacco plant has from 12 to 20 leaves, which are graded in from 6 to 10 different grades. Leaf tobacco is marketed in a different way from other agricultural products, especially in the southern states. The general situation was briefly illustrated by a witness of long experience and familiarity with the tobacco traffic, as follows:

Grain is bought and sold by the bushel; coal and metals by the ton; lumber by the thousand feet; brick by the thousand; flour and sugar by the barrel. These and scores of articles are traded almost exclusively by the carload. Many manufactured articles, while not fundamentally a carload unit, are bought in carload units at a price less than that quoted for smaller quantities.

Leaf tobacco is bought by the pile, paid for by the pound; and I have never heard of leaf tobacco being bought by the carload. In the case of grain, the farmer hauls his wheat or corn to the elevator; the elevator gets the grain in its vicinity. The elevator concentrates the product. When the elevator sells and ships it is in carload units. Leaf tobacco is hauled into town by the farmer like wheat. It is placed on the floor of a warehouse in piles of 50 pounds or more, and each pile sold at auction to the highest bidder. A large number of buyers for both foreign and domestic account attend these sales.

Leaf tobacco used in the manufacture of cigars is grown principally in the states of Connecticut, Pennsylvania, Ohio, and Wisconsin.

sin, and after being cured and stripped is packed in boxes, commonly called cases. The leaf is usually carried from the farm to packers' warehouses, where it is prepared for market. It is then shipped, chiefly in carloads, to dealers at distributing centers. The next movement is to what are known as sweating plants, where it is sweated and put in condition for the cigar manufacturer. From sweating plant to factory the entire movement is in less than carloads. There are many factories for making cigars, but comparatively few sweating plants. The common practice has been to establish sweating plants at points other than where the cigars are made and to distribute from those points to the factories, which in most cases are not large enough to consume tobacco in carload quantities.

The other types of leaf tobacco, which are used in the manufacture of plug and smoking tobacco, cigarettes, and snuff, and constitute about 85 per cent of the annual crop, usually move in hogsheads. Whether in hogsheads, barrels, or boxes, it is readily loaded with many other kinds of freight.

The rating on leaf tobacco in bulk is the same in the southern and western classifications as in the official. The traffic moves in all three territories in any quantity under a rating of fourth class. There is a large interterritorial movement, especially between points in official and points in southern classification territories. In some instances the official classification applies to interterritorial movements; in others the southern classification applies; and in still others the southern classification applies south of the Ohio River and the official classification north of the river. These varying conditions make but little difference, and work no material hardship to shippers so long as the ratings are the same in both territories. On traffic having such an extensive interterritorial movement a uniform arrangement as between classifications is manifestly desirable for carriers as well as shippers.

There is but little risk in shipping leaf tobacco in any of its forms. The testimony shows that loss and damage claims are practically negligible. No special service is required of carriers and no empty car movement of consequence is involved. In these as in other respects there has been no change of transportation conditions for years.

A carload rating would necessitate loading by shippers, and protestants claim, but respondents do not admit, that this would require the use of team tracks instead of freight station platforms from which tobacco is now loaded directly into the cars. The hogshead of tobacco varies in weight from 1,000 to 1,800 pounds and is easily loaded from a platform, but would be difficult to load from wagons or trucks into cars placed on team tracks. One man can roll a hogs-

head into a car from a platform, whereas it would require several men to load a hogshead from a wagon or truck.

Exhibits were introduced by both sides intended to show the revenues to the carriers under existing ratings as compared with revenues under the proposed ratings. The information is in the form of estimates based on past shipments and is not of a definite nature, but giving it weight at face value we do not think it sufficient to show that revenues under the present ratings are other than just and fair to the carriers.

It might be urged that in other proceedings concerning any-quantity rates the Commission was asked to establish a carload rate lower than the existing rate and merely refused to disturb the existing arrangement, while here protestants seek to have it go beyond this and forbid the carriers to establish a carload rating on leaf tobacco. No such question is presented. The matter in issue is the propriety of the proposed classification ratings. Respondents desire to eliminate the any-quantity rating on leaf tobacco. In attempting to do so they have elected to increase the rating on all shipments moving in less-than-carload quantities rather than to decrease the rating on such as are made in carloads. The justness and reasonableness of the proposed ratings and of the resulting increased rates must be shown.

Upon consideration of all the evidence presented concerning leaf tobacco we are of opinion and find that the carriers have not justified the proposed changes in the classification of leaf tobacco.

(b) TOBACCO SIFTINGS OR SWEEPINGS AND TOBACCO CUTTINGS OR SCRAPS.

The proposed increase in the less-than-carload rating on tobacco cuttings or scraps, and on siftings or sweepings, is objected to on the ground that the new rating would be out of harmony with existing ratings on analogous commodities such as carpet mill, felt mill, flax mill, and cotton factory sweepings, and other similar articles of refuse, which are dealt with in another part of this report.

Tobacco cuttings or scraps move almost entirely in less-than-carload lots. The proposed change from fourth to third class would mean an increase of about 45 per cent in freight charges. We are of opinion that the change has not been justified.

Tobacco siftings or sweepings are low-grade commodities and generally move under specific commodity rates. The record affords no justification for an increased rating on these articles.

(c) PLUG OR TWIST TOBACCO.

Plug or twist tobacco has been rated third class in less than carloads since official classification No. 1, and fourth class in carloads

since 1899. The proposed changes are to rule 25 in less than carloads and rule 26 in carloads, which would mean an increase in freight charges of about 10 per cent in less than carloads and 14 per cent in carloads.

The following table is illustrative of the increases proposed :

	Distance.	L. C. L.		C. L.	
		Present rate.	Proposed rate.	Present rate.	Proposed rate.
	<i>Miles.</i>				
From Jersey City, N. J., to—					
New Haven, Conn.....	77	22	22.4	17	17.6
Philadelphia, Pa.....	99	15.8	16.1	12.6	12.6
Harrisburg, Pa.....	188	23.1	25	17.9	18.5
Boston, Mass.....	217	27.5	28.1	21	22
Syracuse, N. Y.....	290	26.3	26.8	18.9	21
Buffalo, N. Y.....	409	29.5	29.8	20.1	23.6
From St. Louis, Mo., to—					
Terre Haute, Ind.....	168	23.1	24.6	15.2	18.5
Fort Wayne, Ind.....	342	28.9	32.6	20	23.1
Detroit, Mich.....	488	32	35.3	22.6	25.6
Cleveland, Ohio.....	548	35.2	40.2	24.7	28.2
Pittsburgh, Pa.....	621	39.4	43.8	27.8	31.5
Average.....	313	27.5	29.5	19.8	22

The loading weight ranges from 40 to 55 pounds per cubic foot, or something like 90,000 pounds per car. It is a traffic of large and continuous movement, approximately 134,424 tons annually, and, as package freight, yields a relatively high revenue at the present less-than-carload rating of third class.

There has been no material change in transportation conditions with respect to this traffic such as would justify increased freight charges, especially in view of the recent general increase of 5 per cent in official classification territory.

The only substantial reason offered in justification was that as a general rule a manufactured article should take a higher rating than the raw material. Leaf tobacco as it moves in commerce is hardly a raw material. Be that as it may, the proposed increased rating on leaf tobacco has not been justified. Moreover, the general rule is subject to exceptions based on considerations arising out of varying conditions. For example, the manufactured article might be a better transportation unit than the raw material. Few articles are given carload ratings higher than fourth class in the official classification, and it does not appear from the record that plug or twist tobacco should be added to the list.

Upon the record we find that the carriers have not justified the proposed increased ratings on plug or twist tobacco.

GRAIN AND GRAIN PRODUCTS.

The various kinds of grain and articles commonly called grain products are at present rated sixth class in carloads and fifth class
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in less than carloads. The item relating to flour produced from wheat, buckwheat, corn, or rye, and that relating to corn meal, contain a provision authorizing shipments in wooden containers at estimated weights of 200 pounds per barrel and 100 pounds per half barrel. These ratings and estimated weight provisions have been in effect for many years, practically ever since official classification No. 1 was issued. By the supplement under suspension it is proposed to increase the less-than-carload rating to fourth class and the estimated weights to 214 pounds and 110 pounds, respectively.

The different kinds of grain are wheat, corn, oats, rye, barley, and buckwheat. The items embracing what are known as grain products are numerous and need not be stated in detail. The principal controversy relates to the proposed increase in the less-than-carload rating on flour and mill feed and in the estimated weights of flour in barrels and half barrels.

The respondents contend that fifth class is essentially a carload rating and that the application of fifth-class ratings and rates to shipments in less than carloads is a departure from the rule which should be corrected. Out of the few general groups of commodities now rated fifth class in less than carloads, grain and grain products constitute the principal group. Official classification No. 1 did not contain many of such ratings, and it is said that they, together with other similar ratings incorporated in early supplements, have been largely eliminated. Apparently the purpose of the carriers is to eliminate from the official classification all fifth-class ratings on less-than-carload shipments.

While grain and grain products are rated the same, the movement of grain in less-than-carload quantities is relatively light. Grain usually moves in bulk in carloads, with a carload minimum closely approximating the marked capacity of the car, and generally on commodity rates. The average loading of merchandise cars in official classification territory, including the heavier loadings to and from the principal points, is from 10,000 to 12,000 pounds, and the average loading of package cars, in which flour and mill feed in less-than-carload shipments are generally handled, is probably less than 10,000 pounds. It is contended that traffic moving under fifth-class rates in cars of an average loading of 10,000 pounds or less can not be considered remunerative traffic.

The respondents lay stress upon the fact that on shipments of flour and other grain products carriers are subjected to relatively large loss and damage claims. The protestants contend that such claims are largely due to defective transportation equipment and to lack of proper and efficient handling in transit. Claims for loss and damage on shipments in barrels are not large. It was testified that

on shipments in sacks such claims result chiefly from the use of cars with leaky roofs, broken sideboards, and protruding nails. Protestants and respondents filed exhibits showing the amount paid in loss and damage claims on less-than-carload shipments. According to protestants the claims paid amounted to about 2.1 per cent of the freight charges, while an exhibit introduced by respondents represented loss and damage claims, said to have been paid by a large flour-carrying road, amounting to 6.99 per cent of its flour revenues.

The protestants represent over 3,000 millers of grain and a number of manufacturers of slack cooperage. The record shows that there is strong competition between the small miller who is compelled by commercial and economic conditions to ship in less than carloads and the large miller who ships in carload quantities. A very large proportion of the millers in official classification territory are of the former class, and it was shown that the competition between them and the large millers of the west and northwest is especially acute. About 600 of the 674 millers in Pennsylvania ship flour and mill feed chiefly in less than carloads. There is competition between traffic moving from retail stores and small jobbing houses and traffic moving in carloads from wholesale houses in the same towns. Shipments by the small miller move directly to the retail dealer, the small baker, and the small jobber, who are unable because of economic or other reasons to buy or handle flour or other grain products in carload quantities. Flour is also shipped in large quantities by water from the Pacific coast via the Panama Canal to north Atlantic ports and distributed by rail to interior points in competition with the output of the small miller in official classification territory.

The following table is illustrative of the proposed increases:

From—	To—	Distance.	Present rates.	Proposed rates.	Percent- age of in- crease.
		<i>Miles.</i>			
Chicago, Ill.....	Benton Harbor, Mich.....	92	9.5	13.1	38
Do.....	Muskegon, Mich.....	185	12.6	15.8	26
Fort Wayne, Ind.....	Bryan, Ohio.....	51	7.9	10	27
Do.....	Ypsilanti, Mich.....	131	10.5	13.7	30
Cleveland, Ohio.....	Erie, Pa.....	95	9.5	12.6	33
Do.....	Westfield, N. Y.....	124	10.5	13.7	30
Troy, Ohio.....	Connersville, Ind.....	95	8.9	12.1	36
Honeoye Falls, N. Y.....	Springfield, Mass.....	342	18.4	21.5	17
Lockport, N. Y.....	Harrisburg, Pa.....	322	16.9	20.1	19
Catasauqua, Pa.....	Bound Brook, N. J.....	63	8.4	11.6	38
Average.....	.....	150	11.3	14.4	27

In all cases the increases would equal the difference between the fifth-class and the fourth-class rates, and the general average would be about 25 per cent. If the change in estimated weights should become effective, a further increase in freight charges of 7 per cent on flour in barrels and 10 per cent on flour in half barrels would

result. Moreover, under the present classification the carload minimum is 200 barrels, or 400 half barrels, the equivalent of 40,000 pounds. The increased weights would automatically increase this minimum to 42,800 pounds on flour in barrels and apparently to 44,000 pounds on flour in half barrels. There are extensive shipments of flour in mixed carloads of barrels or half barrels with sacks, and under rule 10 of the classification such shipments would be subject to the increased minimum.

The percentage of increase in freight charges on the various kinds of milled feed in less than carloads would be substantially the same as on flour. These articles are generally sold by the ton.

Flour moves continuously and in very large volume in official classification territory under existing rates. With few exceptions the small miller depends for his profits entirely upon his less-than-carload business. The margin of profit is small, with a maximum of 10 cents per barrel and a range as low as 2 cents per barrel.

No change is proposed in the carload rating, which is sixth class. Flour in carloads moves largely under specific commodity rates.

It is evident from the record that the primary purpose of the suggested change of rating was to remedy, so far as grain and grain products are concerned, supposed defects in the classification based on the theory that fifth-class ratings for less-than-carload traffic are unusual and out of harmony with sound classification principles.

But, as we have remarked before, we are dealing with the reasonableness of the proposed ratings as applied to actual movements, and only incidentally with the theories upon which such ratings are constructed. The changes proposed are radical, and the respondents have failed to justify the increased rates which would result.

The respondents testified that a fair average weight of a barrel of flour is 214 pounds. The flour weighs 196 pounds, and the barrels average 18 pounds. The proposed increase in the estimated weights per barrel and half barrel is based upon the proposition that, as far as practicable, freight charges should be assessed on actual weight, as is done in the case of flour in sacks.

On the face of the existing estimated weight provisions as applied to shipments of flour in barrels and half barrels it would seem that charges are paid on less weight than is actually hauled. It was testified that both flour and mill feed are subject to shrinkage in weight due to drying out after manufacture. It was said that in flour the moisture content amounts to approximately 13.5 per cent. Millers pack flour at net weights as soon as manufactured of 196 pounds in a barrel, 98 pounds in a half barrel, and varying weights less than a barrel in sacks. These weights are stenciled on the containers, whether barrels, half barrels, or sacks. The moisture content

is affected by varying climatic and other conditions, which make it impossible to estimate it with accuracy. The drying out process begins at once, but the record does not show to what extent it goes before shipment or when it is concluded, neither is it shown whether or not the several kinds of feed are subject to shrinkage to the same extent as flour.

There is force in the contention by the carriers that as to all commodities freight charges which are based upon weight as the unit should be assessed upon the actual or correct weight. The fact that the estimated weight of 200 pounds per barrel has been so long in effect should not prevent the adoption of the correct weight if the estimate now applied does not fairly represent the true weight in transportation. The proposed estimated weight of 214 pounds per barrel is not a guess. It appears from the evidence that the actual weight of the flour and the barrel has been and is 214 pounds. Protestants argue that as to flour in sacks the drying out process equals or exceeds the weight of the sacks, and therefore when the weight of the flour in sacks and of that in barrels is averaged up the carriers receive compensation for all that is transported. Their witness admitted that 214 pounds is a "very fair average" weight of barrels of flour.

We are of opinion that respondents have justified the proposed increased weights to be applied in assessing transportation charges on flour in barrels and in half barrels.

As stated earlier in this report, the parties in Investigation and Suspension Docket No. 682 agreed that the issues there presented should be determined by the conclusions reached in No. 604 with respect to ratings on grain and grain products. Accordingly, we find that respondents in the former proceeding have failed to justify the increased classification ratings proposed by them. The order therein will require the cancellation of the suspended schedules.

RAGS, SCRAP PAPER, AND OTHER WASTE MATERIALS.

This general group of articles includes rags, scrap or waste paper, felt clippings or scrap, knit goods scraps, carpet mill sweepings, flax mill sweepings, rope mill sweepings, rope mill waste, jute waste, and rope or rag dust, n. o. s., in bales. The present ratings are sixth class in carloads and fifth class in less than carloads. It is proposed to increase the less-than-carload rating to fourth class, with no change in the carload rating.

The respondents showed that official classification No. 1 included items of paper stock (scrap or waste paper), rags, and felt clippings or scrap. The term "paper stock" was subsequently discontinued,

and at present the description is "paper, scrap or waste." Other articles have been added to the general group so that it now comprises the entire list named above.

All the articles are used as paper makers' fibers, but not all are confined to such use. Cotton rags may be used to produce shoddy from which fabrics of low grade are produced. Woolen rags are sometimes used for the manufacture of felted roofing paper and the higher grades to produce shoddy which in turn is carried into the manufacture of cloth. Thus it appears that some of the articles have an adaptability for higher uses than paper making. But taken as a whole they are commodities of very low grade, and have moved in less than carloads for many years under a rating of fifth class.

Respondents rely chiefly on the proposition that fifth-class rates are too low for less-than-carload shipments. They say the average loading of less-than-carload freight is so low that the business ought to be handled under a rating of fourth class.

Protestants showed that the weight density of these articles has greatly increased in recent years as the business has grown in importance and the volume of movement increased. It is about 100 per cent greater now than when the rating of fifth class was first established. One of the objections to the proposed increased rating is based on this fact. About 60 to 65 per cent of the movement is in less-than-carload lots, and the lowest grades constitute the bulk of the traffic.

The business of collecting and marketing these waste materials is widely extended, covering the entire country. A change such as now proposed would result in increases in freight charges ranging from 2 to 40 per cent, with a general average of about 18 per cent over the present rates.

Claims for loss and damage are so rare as to be negligible. The total amount paid to one large dealer did not exceed \$100 in 15 years. The loss to another large dealer was so small that no damage claims were ever presented. Compressed in bales the different articles may be carried without injury to other freight in the same car, and no special transportation equipment is required.

Respondents say that the narrow spread of one class between the present ratings has a tendency to induce insufficient compression and consequent light loading and lower revenue returns per cubic foot of car space. This was positively denied by the protestants, whose evidence is to the effect that there is no such tendency under the present ratings and that, as already indicated, the weight density of the commodities is twice as great now as when the fifth-class rating in less than carloads was established. It might be remarked that respondents have selected rather an indirect method of securing

greater weight density. It is not apparent what advantage would accrue under the proposed rating to the shipper who compressed his less-than-carload shipments to the greatest possible extent as compared with his competitor who failed to do so. Upon the facts of record we find that the proposed increased rating has not been justified.

CONCLUSION.

It follows from the foregoing that the classifications, regulations, and practices contained in the tariffs under suspension, in so far as herein found not to have been justified, must be canceled. No finding is made with regard to other ratings in the supplement which are not discussed herein. An appropriate order will be entered.

HARLAN, *Commissioner*, dissenting:

The rates on beer, tobacco, grain, and grain products in my judgment are too low, and the advances here proposed by the carriers seem to me to have been justified by the respondents' showing of record.

37 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 623.
EXPORT GRAIN CASE.

Submitted October 13, 1915. Decided December 14, 1915.

Proposed increased rates on grain, grain products, and by-products from central freight association territory and certain points in Wisconsin, Iowa, Missouri, and Kentucky to Atlantic ports for export found not justified, and schedules ordered canceled.

J. L. Minnis, T. W. Reath, R. Walton Moore, M. P. Callaway, and N. S. Brown for respondents.

J. S. Brown, J. C. Jeffery, and H. J. Campbell for Board of Trade of the city of Chicago.

W. M. Hopkins for Western Elevator Company.

Herbert Sheridan and J. R. Hoover for Baltimore Chamber of Commerce.

D. N. Lewis for state of Iowa, Douglas Company, Clinton Sugar Refining Company, and J. C. Hubinger Brothers Company.

R. R. Hargis for Indianapolis Board of Trade.

C. J. Austin for New York Produce Exchange.

G. A. Schroeder for Chamber of Commerce of the city of Milwaukee.

REPORT OF THE COMMISSION.

HALL, Commissioner:

This proceeding involves tariff schedules proposing increased car-load rates on grain, grain products, and by-products to Atlantic ports for export from central freight association territory, points on the west bank of the Mississippi River in Iowa and Missouri, certain points in Kentucky immediately south of the Ohio River, and points in Wisconsin taking Chicago rates to the east. The tariffs were filed to take effect on various dates from April 15, 1915, to June 10, 1915, inclusive, but upon protests by the Board of Trade of the city of Chicago, the Baltimore Chamber of Commerce, and others, were suspended until August 13, 1915, and later until February 13, 1916.

The increases proposed are supplementary to the increase in the same rates following *The Five Per Cent Case*, 32 I. C. C., 325. Tariffs filed to take effect in December, 1914, proposed to increase the rates on grain and grain products from and to the points involved by 1 cent per 100 pounds, but were suspended and, upon issuance of our order in that proceeding, were canceled in favor of tariffs publishing rates

not in conflict with that decision. These increases amounted in most cases only to fractions of a cent, and as a rule the increased rates now in issue include the remaining fractions necessary to bring the increase up to 1 cent as originally proposed. All rates in this report are stated in cents per 100 pounds.

Increases of 1.3 cents on grain and 1.2 cents on grain products are proposed from stations on the Vandalia Railroad from Switz City, Ind., to Vincennes, Ind., inclusive, and an increase of 1.2 cents on starch from certain points and over certain lines.

Two kinds of rates are involved, through rates from producing points and reshipping rates from Chicago and similar reshipping points. Representative rates of both kinds, both present and proposed, and the corresponding domestic rates are as follows:

To Baltimore from—	Export.			Domestic.	
	Grain.	Flour.	Other products.	Grain.	Products.
Chicago, Ill. Reshipping rates:					
Prior to Jan. 20, 1915.....	11.5	12.0	12.0	13.0	13.7
Jan. 20, 1915.....	12.2	12.8	12.8	13.8	14.5
Proposed.....	12.5	13.0	13.0	13.8	14.5
Bloomington, Ill. Through rates:					
Prior to Jan. 20, 1915.....	18.5	19.0	19.0	20.0	20.7
Jan. 20, 1915.....	19.2	19.8	19.8	20.8	21.5
Proposed.....	19.5	20.0	20.0	20.8	21.5
Walkerton, Ind. Through rates:					
Prior to Jan. 15, 1915.....	15.5	16.0	16.0	16.0	16.5
Jan. 15, 1915.....	16.4	17.0	17.0	17.0	17.5
Proposed.....	16.5	17.0	17.0	17.0	17.5
Schoolcraft, Mich. Through rates:					
Prior to Jan. 15, 1915.....	15.5	16.0	16.0	16.0	16.5
Jan. 15, 1915.....	16.4	17.0	17.0	17.0	17.5
Proposed.....	16.5	17.0	17.0	17.0	17.5
Fremont, Ohio. Through rates:					
Prior to Jan. 15, 1915.....	12.0	12.5	12.5	12.5	13.0
Jan. 15, 1915.....	12.7	13.3	13.3	13.3	13.8
Proposed.....	13.0	13.5	13.5	13.3	13.8
Comanche, Iowa. Through rates:					
Prior to Jan. 20, 1915.....	20.0	20.5	20.5	21.5	22.2
Jan. 20, 1915.....	20.7	21.3	21.3	22.3	23.0
Proposed.....	21.0	21.5	21.5	22.3	23.0

The export rates to Philadelphia, Pa., New York, N. Y., and other Atlantic ports are adjusted to the rates to Baltimore in accordance with the Atlantic port differential adjustment. The differential alignment of rates from Chicago and related points to the Atlantic seaboard as compared with the rates from St. Louis, Mo., and related points to the Gulf ports was considered in some detail in the *1915 Western Rate Advance Case*, 35 I. C. C., 497, 576, 577.

Respondents urge that economic conditions no longer require any difference between export and domestic rates on grain and grain products to Atlantic ports, and that their export rates to these ports can not be unreasonable if they do not exceed the corresponding rates on domestic traffic. Government statistics are adduced which show that the total exportation of wheat, flour, corn, and corn meal through

all ports was relatively much less during the last decade than during the preceding decade. It is also shown that prices on grain and grain products have risen. But Baltimore protestants insist that a very considerable amount of grain and grain products still must seek a market abroad. Respondent's evidence shows that shipments from Chicago to New York for export of wheat average 76,460 pounds per car, and of flour, 64,900 pounds, while domestic shipments of wheat average only 70,414 pounds per car, and of flour 43,407 pounds. These figures indicate that the transportation conditions may be substantially different for export and domestic traffic to Atlantic ports, and respondents fail to show that such is not the case. The ton-mile earnings under the present and proposed reshipping rates from Chicago and neighboring reshipping points to the various Atlantic ports are shown to be less than the average ton-mile earnings of representative eastern carriers on all freight. But such earnings on grain and grain products would properly be low in eastern trunk line territory because of the exceptional volume of the traffic. *Investigation and Suspension Docket 78*, 23 I. C. C., 272, 275. Moreover, these reshipping rates are not fairly representative. From many of the producing points involved Chicago is out of the direct line to Atlantic ports, and proportional rates are maintained to and from Chicago resulting in through rates equal to the rates over the direct lines. The following table compares the ton-mile earnings under the present reshipping rate on grain from Chicago to Baltimore with those under the present through rates from points in Indiana and Illinois, both by way of Chicago and by the direct lines:

To Baltimore from—	Rate.	Miles via Chicago.	Ton-mile revenue.	Miles via direct lines.	Ton-mile revenue.
			<i>Mills.</i>		<i>Mills.</i>
Chicago, Ill.....	12.2	796	3.07	.....	.....
Evansville, Ind.....	19.2	1,043	3.55	805	4.77
Springfield, Ill.....	19.2	962	3.91	884	4.36
Decatur, Ill.....	19.2	964	3.98	840	4.57
Champaign, Ill.....	19.2	922	4.16	805	4.76
Chatsworth, Ill.....	19.2	892	4.30	819	4.69

Grain shippers in the territory involved are entitled to reasonable rates by the direct lines, and unless the present rates by the direct lines are unreasonably low they can not be increased merely to accord more revenue to the carriers maintaining the more circuitous routes through Chicago and neighboring reshipping points. If the lines operating by way of Chicago can not meet reasonable rates by the direct lines they should relinquish the traffic. *Grain Rates in Central Freight Association Territory*, 28 I. C. C., 549, 557-558. Respondents offer no evidence to show that the present through rates from points of actual production are unreasonably low.

No specific attempt was made at the hearing to justify the proposed increase of more than 1 cent per 100 pounds in the rates on grain and grain products from points on the Vandalia Railroad, and in the rates from various points on starch.

The rates involved on grain products to Atlantic ports are higher than the rates on grain, while grain products take the same rates as grain from the southwest and Missouri River points to Gulf ports. Chicago protestants contend that the same relationship in the rates on grain and grain products should obtain to both groups of ports. The adjustment assailed is not effected by the schedules before us, which would decrease the difference between the rates on grain and grain products by 1 mill per 100 pounds. The question of the propriety of the present relationship is not directly in issue, and the present record affords no reason or basis for a finding thereon.

We find that respondents have not justified the proposed increased rates, and the schedules under suspension must be canceled.

An appropriate order will be entered.

HARLAN, *Commissioner*, dissenting:

Until the question was settled by the Supreme Court of the United States in the so-called *Import Rate Case*, 162 U. S., 197, there had been some uncertainty in the Commission as to the right of a carrier to maintain on imports and exports lower rates than were in effect at the same time on domestic traffic between the same points. Since that time the Commission has repeatedly acquiesced in tariffs in which that distinction in rates was made. In the light of this record, however, and in the absence of some more definite showing of justifying differences in the conditions of transportation than the heavier loading of the export traffic mentioned in the majority report, I am unable to assent to the finding and order of the report forbidding the moderate advances here proposed. Without discussing in detail all the conditions attending the transportation of export traffic, it seems to me that the longer free time allowed at the port on export shipments fully offsets the heavier loading alluded to in the majority report.

I am requested by Mr. COMMISSIONER CLARK and Mr. COMMISSIONER DANIELS to say that they concur in this view.

37 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 628.
COAL TO KENTUCKY POINTS.

Submitted October 9, 1915. Decided December 18, 1915.

Proposed cancellation of joint rates on coal from points in West Virginia to points in Kentucky not justified.

***W. A. Northcutt* for Louisville & Nashville Railroad Company and Cincinnati, New Orleans & Texas Pacific Railway Company.**

***W. S. Bronson* for Chesapeake & Ohio Railway Company.**

***G. M. Freer* for certain protestants.**

REPORT OF THE COMMISSION.

CLARK, Commissioner:

The Chesapeake & Ohio Railway Company, by its tariff I. C. C. 6245, filed to become effective May 2, 1915, but suspended to August 30, 1915, and subsequently to February 29, 1916, proposes to cancel joint rates on coal from what are known as the Kanawha and Big Sandy coal fields, located on its line in West Virginia and Kentucky, respectively, to points in central Kentucky on the Louisville & Nashville Railroad, the Cincinnati, New Orleans & Texas Pacific Railway, and the Frankfort & Cincinnati Railway. If this tariff becomes effective, combination rates from 20 cents to 60 cents per ton higher than the present joint rates will apply.

The proposed cancellation grows out of a disagreement between the Louisville & Nashville and the Chesapeake & Ohio as to whether or not the rates to central Kentucky points from the Kanawha and Big Sandy fields, participated in by the Louisville & Nashville, should be higher than the rates from mines in Tennessee and Kentucky served by the Louisville & Nashville. There is also disagreement between the Chesapeake & Ohio and the Cincinnati, New Orleans & Texas Pacific as to the division of the present rates.

The protestants are certain coal producers in West Virginia and various consumers located at different points in Kentucky. At the hearing, on brief and on argument the Chesapeake & Ohio appeared as a party protestant. The principal respondents are the Louisville & Nashville Railroad and the Cincinnati, New Orleans & Texas Pacific Railway. The Frankfort & Cincinnati Railway entered no appearance.

The Kanawha and Big Sandy districts are served by the Chesapeake & Ohio. The Jellico-Middlesboro district, and other districts in Tennessee and Kentucky taking the same or related rates, are served principally by the Louisville & Nashville and the Cincinnati, New Orleans & Texas Pacific. Since 1894 joint rates on coal from the Kanawha district of West Virginia, and for a shorter period from the Big Sandy district in Kentucky, to points in central Kentucky have been the same as those from the Jellico-Middlesboro district in Kentucky and Tennessee to the same destinations.

For the purposes of this case it is sufficient to use the Jellico group as representative of the coal-producing districts on the Louisville & Nashville and the Cincinnati, New Orleans & Texas Pacific, and the Kanawha groups as representative of the mines on the Chesapeake & Ohio. The movement from the Big Sandy field to the destinations here in question is principally, if not wholly, intrastate, as is also the movement from some of the groups on the Louisville & Nashville and the Cincinnati, New Orleans & Texas Pacific. From the Jellico group to nine stations in central Kentucky, used as representative by the Louisville & Nashville, the average distance is approximately 156 miles, while to the same stations from Kanawha groups 2 and 3 the average distance is about 238 miles.

The Louisville & Nashville asserts that it has never considered the relationship between the rates from the Kanawha field and from its Jellico-Middlesboro district to be proper; that for many years this relationship has been the subject of complaint by operators located on its line who contend that the relationship is discriminatory against them; and that in order to remove this discrimination it entered, as early as 1911, into negotiations with the Chesapeake & Ohio for the purpose of having the Chesapeake & Ohio increase its rates from the Kanawha and Big Sandy fields to points reached by the Louisville & Nashville in central Kentucky 10 cents per ton. This the Chesapeake & Ohio refused to do and insisted that these two districts should remain on a parity with the Jellico-Middlesboro district. The Louisville & Nashville then notified the Chesapeake & Ohio that on shipments from the Kanawha and Big Sandy fields the Louisville & Nashville would demand as its divisions of the joint rates its local rates from the junction points at which it received the shipments from the Chesapeake & Ohio. The Chesapeake & Ohio thereupon concluded to cancel the joint rates rather than to pay the increased divisions demanded and filed the tariff which is under suspension in this proceeding.

The Chesapeake & Ohio asserts that it has been satisfied with and does not now desire to increase its present joint rates from the Kanawha and Big Sandy districts, to these points in central Kentucky. It contends that such an increase would deprive the mines on its

line of the opportunity they now have of competing with the mines in the Jellico-Middlesboro group, and that the proposed rates would be unreasonable. It urges that the Commission is without jurisdiction in this proceeding to consider any rates other than those proposed; that as there is no evidence of record to justify these rates an order requiring their cancellation must be entered; and that there is no evidence to show that the present relationship of rates is unjustly discriminatory.

The Louisville & Nashville has not attempted to justify the proposed increased rates except to the extent of 10 cents per ton over the existing rates, and is willing that this increase shall go to the Chesapeake & Ohio. It asserts that it is not attempting to justify the proposed action of the Chesapeake & Ohio, but is defending its own demand that the Chesapeake & Ohio shall increase its rates 10 cents per ton, and is seeking the aid of the Commission in an effort to compel the Chesapeake & Ohio to take the action that the Louisville & Nashville was powerless to bring about. It has presented evidence intended to show that the rates from stations on its line are just and reasonable and that rates 10 cents per ton higher from the Kanawha and Big Sandy groups would likewise be just and reasonable. It urges that under section 15 of the act we have the power, if we find that the proposed rates have not been justified, to say that the present rates may not be continued because they are unjustly discriminatory against the mines located on the Louisville & Nashville, and order that the discrimination be removed by allowing an increase of 10 cents per ton in the rates from the Kanawha field.

The only issue here is the reasonableness and propriety of the increased rates proposed by the tariff under suspension, and it is admitted by all parties that no attempt has been made to justify them in their entirety. The allegation of discrimination which is the basis of the Louisville & Nashville's justification is not directed against the rates here under suspension, but is, in fact, an attack upon the present relationship. This carrier has assumed that the relationship now existing is discriminatory, but that issue is neither properly presented nor supported by proper evidence in this proceeding. If it is thought that the rates from the Kanawha field effect undue preference in favor of operators in that group to the prejudice of those in the Jellico-Middlesboro group, the way is open for presentation of that question in a direct proceeding in which shippers as well as carriers interested in either or both sets of rates may have opportunity to present testimony.

The dispute between the Chesapeake & Ohio and the Cincinnati, New Orleans & Texas Pacific is as to the divisions of rates. The latter is demanding increased divisions of the rates to certain

points on its line in amounts ranging from 5 cents to 15 cents per ton, and has not attempted to justify the proposed increases in any amount in excess of the increased divisions asked. We have uniformly held that a disagreement between carriers as to divisions of rates is of itself no justification for an increase in rates, and we see no reason for a different conclusion here.

We are of the opinion, and find, that neither the withdrawal of joint through rates nor the rates proposed have been justified. It follows that the suspended tariff must be canceled. An order in conformity with these findings will be entered.

INVESTIGATION AND SUSPENSION DOCKET No. 647.
LUMBER TO WISCONSIN POINTS.

Submitted November 8, 1915. Decided December 19, 1915.

Proposed increased rates on lumber in carloads from points in Missouri and Arkansas to Milwaukee, Wis., and points immediately south of Milwaukee, found to have been justified. Order of suspension vacated.

G. B. Webster for Ozark Cooperage & Lumber Company and Mill Shoals Cooperage Company.

W. P. Anderson for Gideon-Anderson Lumber Company and Gideon Cooperage Company.

F. R. Gadd for Wisconsin Lumber Company.

E. Kauffman for Lumbermen's Exchange of St. Louis.

H. G. Herbel for Missouri Pacific-Iron Mountain railways.

C. B. Cardy for Chicago & Eastern Illinois Railroad Company.

Thomas Bond for St. Louis & San Francisco Railroad Company.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

The tariffs suspended herein propose increased carload rates on lumber, all kinds, from certain producing points on the St. Louis & San Francisco, the Missouri Pacific, the St. Louis, Iron Mountain & Southern, and the Chicago, Rock Island & Pacific railways in the states of Missouri and northeastern Arkansas, and also on hardwood lumber from points in southern Arkansas, Texas, and Louisiana, to Milwaukee, Wis., and points between Milwaukee and Chicago. In increasing the rates on hardwoods the rates on yellow pine were taken as maxima. Rates and increases and reductions in rates, referred to below, are expressed in cents per 100 pounds.

The extreme increase proposed is 3.2 cents, except from a few stations on the line of the St. Louis & San Francisco Railroad Company, from which it is 3.7 cents. The simple average of all the increases is about 2.55 cents; the weighted average is not a matter of record, but would be less. The suspended tariffs include some reductions, which in most instances amount to 0.2 of a cent. From most points in Missouri and from all points south of Arkansas no change in rates is proposed. On traffic moving through Thebes, Ill., and from Thebes via the Chicago & Eastern Illinois Railroad, the rates are made

by combination on Thebes, and the increases occur in the proportional rates for the haul north of Thebes. Producers and consumers affected have filed protests against the proposed increased rates. The scope of the new adjustment is shown in greater detail by the rate tables given herein.

With the exception of increases on hardwood lumber from points in southern Arkansas, the increases herein involved are from points north of the so-called yellow-pine blanket. Respondents assert that the changes proposed from points north of the blanket correct an adjustment erroneously made in 1909 upon the supposition that the maintenance of the Chicago rates to Milwaukee and the other destinations involved was compelled by reductions which had been made by lines operating through Kansas City, whereas those reductions should have been reflected only in the rates from the blanket where the competition of the Kansas City lines is felt. The increases in rates on hardwood lumber from points in southern Arkansas within the blanket, it is stated, were made in order to equalize the rates on hardwoods with the rates on yellow pine in conformity with the adjustment prevailing north and south of the points of origin herein involved. The protestants rely upon the fact that the 1909 reductions were voluntarily made by the carriers, and contend that the carriers should not now be permitted, by raising the rates, to shut protestants out of markets to which the reduced rates had given them access.

Prior to May 7, 1907, the rates on yellow pine from the blanket territory to Milwaukee and Chicago were 29 cents and 26 cents, respectively, composed of 16 cents to Thebes, 13 cents Thebes to Milwaukee; and 16 cents to Thebes, 10 cents Thebes to Chicago. The same total rates from points of origin to Milwaukee and Chicago applied as joint through rates via St. Louis, Mo., East St. Louis, Ill., and Kansas City, Mo. On the date named the Kansas City Southern Railway Company and the Chicago, Milwaukee & St. Paul Railway Company reduced the rate to Milwaukee via their route through Kansas City to 26 cents, making it the same as the rate to Chicago. This reduction was met in 1909 by the carriers serving the southwest through the eastern gateways, Thebes, St. Louis, and East St. Louis, in order to maintain the commercial parity between mills on their lines and the mills which had been given the advantage of the reduced rate via Kansas City. However, the reductions made through the eastern gateways were not restricted to the territory affected by the reduced rates which had been established via Kansas City. Thus the Chicago & Eastern Illinois Railroad Company met the reduced rates which had been established via Kansas City by reducing its proportional rate, Thebes to Milwaukee, applicable on any lumber

traffic from territory south of Thebes and west of the Mississippi River, from 13 cents to 10 cents, thereby effecting a reduction in the through rates not only from the blanket but also from points north of the blanket.

The competitive influence of the Kansas City Southern, while felt throughout the entire yellow-pine blanket territory by the carriers operating through the eastern gateways, is strongest in the territory from Ashdown, Ark., southward. North, and especially northeast, of Ashdown its influence gradually decreases, and it is practically non-existent northeast of the Arkansas River. It is in this section that protestants are located. They admit that as there had been no reduction in rates from their mills to Milwaukee via Kansas City there was no practical necessity for the reduction made in 1909.

Before the decision in *The Five Per Cent Case*, 31 I. C. C., 351, Milwaukee customarily paid on lumber from Kentucky and Tennessee moving through Cairo, Ill., or Evansville, Ind., a rate 3 cents in excess of the rate to Chicago. The same was true prior to the reductions of 1907 and 1909 in the case of lumber moving from the southwestern states, where the relation was 13 cents from Thebes to Milwaukee as compared with 10 cents to Chicago, and 29 cents from the yellow-pine blanket to Milwaukee as compared with 26 cents to Chicago. The changes of 1907 and 1909 placed Milwaukee upon the Chicago basis. Since the decision in *The Five Per Cent Case*, *supra*, the rates on yellow pine from Evansville, Cairo, or Thebes to Milwaukee and Chicago are 13.7 and 10.5 cents, respectively, except that on traffic from the southwest the proportional rate from Thebes to Milwaukee is 10.5 cents, the same as to Chicago. The rate from the blanket territory to Milwaukee and Chicago is at present 26.5 cents.

It will be observed that at present, except on lumber from the southwest, the proportional rate Thebes to Milwaukee exceeds the proportional rate to Chicago by 3.2 cents. Under the proposed rates protestants will pay only so much of 3.2 cents in excess of the Chicago rate as is permitted by the observance, as a maximum, of the 26.5-cent rate from the more southerly mills to Milwaukee. This avoids fourth section violations. The proposed rates also remove fourth section violations which now exist.

It has already been noted that the increases in rates via Thebes are effected by increases in the proportional rate north of Thebes. Since the increases proposed vary for different points of origin, the proposed proportionals from Thebes must of necessity vary according to the origin of each particular shipment. As a result eight different proportional rates are proposed from Thebes to Milwaukee.

which are as follows: 13.7, 13.5, 13, 12.5, 12, 11.5, 11, 10.5. The rate to be applied north of Thebes depends upon the point of origin of the shipment. This situation is admittedly unique as to the southwestern lumber traffic. A somewhat similar proportional rate adjustment which formerly existed was condemned in the *Interior Iowa Cities Case*, 28 I. C. C., 64. In the present instance, however, we have a different situation, for the proportionals here are compelled by the observance of the long-and-short-haul clause, and moreover are merely a means of equalization of joint through rates via other routes. It becomes interesting under the circumstances here to compare these proportionals with other rates on which lumber originating in the southwest and the southeast is moved from Thebes and from Evansville and East St. Louis into the same territory. Such a comparison follows.

	Distance.	Rate per 100 pounds.	Revenue per ton- mile.	Revenue per car- mile. ¹
	Miles.	Cents.	Mills	Cents.
From Thebes to—				
Milwaukee, Wis.....	463	10.5	4.5	10.2
Do.....	463	11.0	4.7	10.7
Do.....	463	11.5	5	11.2
Do.....	463	12.0	5.2	11.7
Do.....	463	12.5	5.4	12.1
Do.....	463	13.0	5.6	12.6
Do.....	463	13.5	5.8	13.1
Do.....	463	13.7	5.9	13.3
Do.....	378	10.5	5.5	12.5
Do.....	296	9.5	4.4	14.5
Do.....	418	12.6	6	12.6
Do.....	438	12.6	5.7	12.9
Do.....	291	10.5	7.3	16.2
Do.....	288	11.6	8.1	17.1
Do.....	425	12.6	5.9	12.3
Do.....	387	12.6	6.5	14.7
Do.....	345	12.6	7.2	16.4
Do.....	370	12.6	6.6	15
Do.....	348	10.5	6	13.6
Do.....	238	8.5	7.1	16.1
Do.....	342	11.6	6.6	15.3
Do.....	417	12.6	6	12.6
Do.....	336	9.5	5.7	12.7
Do.....	419	12.6	6	12.6
Do.....	467	13.7	5.9	13.2
Do.....	421	12.6	6	12.5

¹ Based on loading of 45,000 pounds per car.

² Present Milwaukee rates.

³ Proposed Milwaukee rates.

With reference to the existing rates shown in the table preceding it is to be borne in mind that they were made effective following the decision of this Commission in *The Five Per Cent Case*, *supra*.

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The proposed and present through rates, either joint or combination, from typical points of origin to Milwaukee, the destination of greatest traffic importance, compare thus:

	Miles. ¹	Rate per 100 pounds.		Revenue per ton-mile.		Revenue per car-mile. ²	
		Present.	Proposed.	Present.	Proposed.	Present.	Proposed.
Hardwood and yellow-pine lumber:		Cents.	Cents.	Mills.	Mills.	Cents.	Cents.
Looper, Mo.....	501	20.5	21.2	8.2	8.5	18.4	19.0
Poplar Bluff, Mo.....	538	18.5	21.7	6.9	8.1	15.5	19.1
Hoxie, Ark.....	599	20.5	23.7	6.8	7.9	15.4	17.8
Newport, Ark.....	634	21.5	24.7	6.8	7.8	15.3	17.3
Austin, Ark.....	693	23.5	26.5	6.8	7.6	15.3	17.2
Hardwood lumber only:							
Little Rock, Ark.....	718	23.5	26.5	6.5	7.4	14.7	16.6
Arkadelphia, Ark.....	783	25.5	26.5	6.5	6.8	14.7	15.2
Farrell, Ark.....	736	23.5	26.5	6.4	7.2	14.4	16.2
Gould, Ark.....	791	23.5	26.5	5.9	6.7	13.4	15.1
McGehee, Ark.....	780	23.5	26.5	6.0	6.8	13.6	15.3
Montrose, Ark.....	811	25.5	26.5	6.3	6.6	14.3	14.8

¹ Mileage from Looper applies via St. Louis; from all other points applies via East St. Louis.
² Based on loading of 17,000 pounds per car.

About two years ago the Chicago & Eastern Illinois Railroad Company restricted the application of its Thebes to Milwaukee proportional to lumber originating south of the state of Missouri. The proposed increased rates on hardwood from southern Arkansas are in accord with the Commission's findings in *Northbound Rates on Hardwood from the Southwest*, 32 I. C. C., 521, in that the rate on yellow pine is observed as a maximum. It may also be noted that the present adjustment to Milwaukee permits, by rebilling at the latter point, the defeat of through rates to some Wisconsin destinations to the extent of one-half cent to 2 cents. This the proposed adjustment prevents.

The protestants principally interested are cooperage manufacturers who were given access to the Milwaukee market by the reductions of 1909. Prior to that time Milwaukee's cooperage stock had been drawn largely from northern Wisconsin and Michigan. Cooperage stock is still produced in these states, but the industry labors under the handicap of greater manufacturing costs as compared with southwestern cooperage production. It is suggested by protestants that the differential of 3.2 cents, Milwaukee over Chicago, is excessive, but their argument is really based upon the fact that the present rates from Thebes to Milwaukee and Chicago are the same.

Upon consideration of all the facts of record, it is the view of the Commission that respondents have justified the proposed increased rates. An order will be entered vacating the suspension.

INVESTIGATION AND SUSPENSION DOCKET No. 597.
COLORADO CLASS RATES.

Submitted August 8, 1915. Decided December 14, 1915.

Proposed withdrawal of present Colorado common-point class rates from St. Paul, Minn., rate territory to common points south of Denver, Colo., and the establishment, in lieu thereof, of through rates based on the combination of intermediate rates over Sioux City, Iowa, found not to be justified. Cancellation of the suspended schedules directed and respondents ordered to maintain for a period of not less than two years rates from the St. Paul territory no higher than those contemporaneously maintained from St. Louis.

W. P. Trickett, W. J. Buchanan, and T. A. McGrath for protestants.

T. J. Norton and A. A. Hurd for Atchison, Topeka & Santa Fe Railway Company.

F. G. Wright and D. R. Lincoln for Missouri Pacific Railway Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The rate group commonly known as the Colorado common-point territory is not definitely described by territorial boundaries in the tariffs of the carriers. Cheyenne, in the state of Wyoming, Holly, in the state of Colorado, Sixela, in the state of New Mexico, and Boulder, in the state of Colorado, are respectively characteristic points in the northern, eastern, southern, and western ends of the group. For rate-making purposes all the points within that territory have long taken common rates with respect to traffic from the Missouri River and the territory east thereof, and from St. Paul and Minneapolis, two important commercial points commonly referred to as the twin cities and forming a rate group hereinafter mentioned as the St. Paul territory. The rate adjustment between the St. Paul territory and the Colorado common points is the matter before us in this proceeding.

The tariffs under suspension, while making no increase in rates from that territory to Denver and points north of Denver, propose: (1) To limit the application of the existing rates by way of routes west of the river to the lines of the Chicago, Burlington & Quincy, the Chicago, Rock Island & Pacific, and the Union Pacific railways through their respective Missouri River crossings from Sioux City to Omaha, inclusive; (2) to cancel the present class rates from St. Paul territory to all the Colorado common points south of Denver, and in

lieu thereof to establish over all lines through rates based on the combination of rates to and from Sioux City, in the state of Iowa. If permitted to become effective, the result of the schedules under suspension will be that as to all traffic from St. Paul territory, moving to Colorado common points through gateways south of Omaha over the lines above named or over any of the so-called prairie lines, rates equal to the combination of rates based on Sioux City will hereafter apply; and on all traffic to all the common points south of Denver over all lines and through all gateways the through rates proposed will also equal the combination of rates to and from Sioux City.

Prior to October 26, 1910, the following rates, in cents per 100 pounds, were in effect to Colorado common points from Chicago, the Mississippi River, and the St. Paul rate territories:

The underlying basis used in the construction of these rates was the sum of the intermediate rates to and from the various Missouri River crossings. But on the date last mentioned the carriers established the rates prescribed by the Commission in *Kindel v. N. Y., N. H. & H. R. R. Co.*, 15 I. C. C., 555, hereinafter referred to as the *Kindel case*, our findings and order therein having been finally sustained in *I. C. C. v. C., B. & Q. R. R. Co.*, 218 U. S., 113. The rates published as the result of that litigation, together with rates then made effective from the St. Paul territory, were, in cents per 100 pounds, as follows:

From—	1	2	3	4	5	A	B	C	D	E
Chicago.....	140	145	110	85	67	50½	63	54	47	38
Mississippi River.....	152	127	104	80½	63	74	56	50	42	35
St. Paul.....	150	145	110	85	67	50½	63	54	47	38

For several years prior to the rate changes growing out of the *Kindel case* the rates from St. Paul territory to Colorado common points had been substantially the same as the rates from the Mississippi River territory. This was due to the fact that the rates from the St. Paul territory, which were based on the combination of rates to and from Sioux City, the nearest Missouri River crossing, were about the same as the rates from St. Louis to Kansas City. When finally readjusting the rates from Chicago and the Mississippi River in conformity with our findings in the case cited, the carriers put their St.

Paul rates on the Chicago basis. While this action resulted in a slight reduction in the St. Paul rates, the relationship theretofore existing between the latter and the rates from Chicago and the Mississippi River was destroyed.

This new rate condition led to the complaint in *Minneapolis Traffic Assn. v. C., B. & Q. R. R. Co.*, 22 I. C. C., 259, hereinafter referred to as the *Minneapolis case*. It was there alleged that the rates from Minneapolis to Denver were unreasonable in themselves and also unduly discriminatory, as compared with the class rates to the same destinations from St. Louis and Chicago. This contention was sustained, and the Commission specifically found that the class rates from Minneapolis to Denver were excessive and unreasonable and should not exceed the rates from St. Louis. Although the principal respondents in the proceeding now before us were not parties defendant in that case they, in common with the other lines, on March 1, 1912, established rates from Minneapolis to all Colorado common points on the basis of the rates from the Mississippi River. As a matter of fact, they went further than was required under our order in that case and made the commodity rates from the Mississippi River the maximum rates from Minneapolis to Denver and points to the north of Denver that were intermediate to Minneapolis on the direct lines. The relationship in the class rates as between St. Paul, Chicago, and the Mississippi River that resulted from changes following our finding and order in the case last mentioned is shown in cents per 100 pounds in the following table:



In January, 1912, the reasonableness of the class rates between the Colorado common points and Chicago and the Mississippi River was again questioned in *Colorado Manufacturers' Assn. v. A., T. & S. F. Ry. Co.*, 28 I. C. C., 82. That complaint also involved the reasonableness of the rates between the Missouri River and the Colorado common points. In our report in that proceeding we held that the westbound rates fixed in the *Kindel case, supra*, were not unreasonable or unjustly discriminatory and that the eastbound rates between the same points should not exceed the westbound rates. It was also held that the rates between the Missouri River and the Colorado common points were unreasonable.

The present class rates in effect from Chicago, the Mississippi River, and the Missouri River, together with the class rates from
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St. Paul territory to all common points and the proposed rates from that territory to the common points south of Denver now under consideration in this proceeding, are as follows:

¹ Based on combination over Sioux City, with Chicago rates as maximum rates on classes 4, D, and E; local rates to Sioux City being as follows:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate.....	00	50	35	27	20	24	20	17	15	13

Three principal reasons are advanced by the respondent carriers in justification of the proposed division of Colorado common-point territory and the increased rates sought to be made applicable to common points south of Denver. These reasons, in the order of their importance, are as follows:

(1) It is contended that when the Commission in the *Minneapolis case, supra*, fixed the class rates from St. Louis to Denver as the maximum rates to be applied from Minneapolis to Denver, it did so chiefly because the short-line distance from Minneapolis was less than the short-line distance from St. Louis. Moreover, they assert that the Commission did not extend to other Colorado common points the basis prescribed to Denver, and that if the respondents were voluntarily to extend the prescribed basis to Colorado common points south of Denver (which, as we have seen, they actually did, so far as class rates are concerned) and were required to observe the fourth section and apply the common-point rates as maximum rates at directly intermediate points in central and western Kansas and eastern Colorado, it would result in rates from Minneapolis to such intermediate points relatively lower, distance considered, than the rates from St. Louis. The respondent carriers fear that this might lead to complaint from St. Louis and Chicago and ultimately might result in reducing the rates found reasonable and prescribed for the future in *State of Kansas v. A., T. & S. F. Ry. Co.*, 27 I. C. C., 673, and also in the *Kindel* and *Colorado Mfrs. Assn. cases, supra*.

(2) It is also contended that the short-line distances from St. Louis to the Colorado common points south of Denver are materially less than from Minneapolis to those points.

(3) The normal basis for rates from the St. Paul rate territory to Colorado common points is alleged to be the Chicago rate, subject to the combination of intermediate rates to and from Sioux City as maximum rates.

The general basis for constructing through rates from eastern rate territories to points in eastern Colorado, western and central Kansas, is to add the following fixed arbitraries to the rates applicable from the Mississippi River:

Class rates from St. Paul constructed on the above basis would be higher than those from Chicago by the following amounts:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate.....	5	4	3	2	1	2	1	1	1½	1

The respondents have filed an exhibit purporting to show to what extent the application, as maximum rates, at eastern Colorado and Kansas points, of the Colorado common-point rates from St. Paul affects rates constructed according to the general basis outlined above. This exhibit shows that the present Colorado common-point rates from St. Paul are applied as maximum rates in the state of Kansas as far east from Pueblo as 356 miles on the Santa Fe and 343 miles on the Missouri Pacific, the respective points being also 261 and 280 miles west of Kansas City. Dodge City, in the state of Kansas, 266 miles east of Pueblo, is perhaps the most easterly point of importance on the Santa Fe at which the application of the common-point rates as maximum rates makes lower than the general basis, and its rates will be used for purposes of illustration. The following table shows (1) the rates at present in effect from St. Paul to Dodge City; (2) the rates that would apply from St. Paul if the general basis for constructing through rates as above explained were unaffected by the rates to Colorado common points; and (3) the rates from Chicago, which rates, as we have explained, are based on the arbitraries above the rates applicable from Mississippi River crossings:

Rates from St. Paul to Great Bend, in the state of Kansas, 83 miles east of Dodge City, constructed upon the general basis outlined, are less than, and are therefore not affected by, the Colorado common-

point rates. For illustrative purposes they may be compared with the rates from St. Paul to the common points and with the rates from Chicago to Great Bend:

	1	%
St. Paul to Colorado common points.....	195	
St. Paul to Great Bend, Kans.	150	
Chicago to Great Bend, Kans.	145	

¹ Only fifth class held down.

The rate adjustment at Dodge City and Great Bend exemplifies the situation which the respondents urge as the most important feature upon which they rely in justification of the changes in the Colorado common-point group and the increased rates proposed in the schedule under suspension. It should be noted, for instance, that the application at Dodge City of the Colorado common-point rates holds down, except upon the last three lettered classes, the rates which, under the general basis for constructing through rates, would otherwise be applicable from St. Paul to that point, and also makes lower rates from St. Paul than from Chicago on classes 2, 3, 4, 5, A, and B. At Great Bend the normal basis, i. e., the Mississippi River rates plus the fixed arbitraries from St. Paul, results in rates not high enough to be depressed by the Colorado common-point rates except as to fifth class. Here, also, it will be noted that, except as to fifth class, the rates from St. Paul are higher than the rates from Chicago by the amount of the differentials which the so-called normal basis fixes in the rates from St. Paul over the rates from Chicago. It will also be observed that if the so-called normal basis of rates obtained to Dodge City the rates from St. Paul would be higher than the rates from Chicago by the same differentials appearing in the Great Bend comparison. Similar comparisons and comments might be made in respect of the rates to points on the Missouri Pacific Railway in western Kansas and eastern Colorado.

The fact that the application from St. Paul territory of the Colorado common-point rates as maximum rates to intermediate points in eastern Colorado and Kansas results in lower rates than would obtain to such points if the general basis for constructing through rates were followed, does not of itself justify increasing the rates to the Colorado common points, in the absence of evidence tending to show that the general basis for rates from St. Paul to such intermediate points is itself reasonable. If we were now to hold on this theory that the proposed rates have been justified, the respondents would then be in a position, if they so desired, to increase the rates to intermediate points in Kansas and eastern Colorado on the assumption that we

have approved the general basis upon which such increased rates were constructed.

As we have said, the respondents urge that the determining factor in the *Minneapolis case, supra*, was the lesser distance from Minneapolis to Denver than from St. Louis to Denver, and they here lay much stress upon the factor of the lesser distance to the common points south of Denver from St. Louis than from Minneapolis. These distances, together with those from Chicago, are as follows:

To—	Route.	From Minneapolis.	From St. Louis.	From Chicago.
		<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>
Colorado Springs...	C. G. W., Omaha, and C., R. I. & P. Ry.....	928		
	C., R. I. & P., Kansas City, and A., T. & S. F. Ry.	1,143		
	Wabash, Kansas City, and C., R. I. & P. Ry.....		901	
	A., T. & S. F. Ry.....			1,078
Pueblo.....	C. G. W., Omaha, and C., R. I. & P. Ry.....	970		
	C., R. I. & P., Kansas City, and A., T. & S. F.....	1,099		
	Wabash, Kansas City, and A., T. & S. F.....		893	
	A., T. & S. F.....			1,059
Trinidad.....	C. G. W., Omaha, C., R. I. & P., Pueblo, and D. & R. G.	1,061		
	C., R. I. & P., Kansas City, and A., T. & S. F.....	1,116		
	Wabash, Kansas City, and A., T. & S. F.....		900	
	A., T. & S. F.....			1,076

It will be seen that the short-line distances from St. Louis are less than from Minneapolis, by from 25 miles in the case of Colorado Springs to 161 miles in the case of Trinidad, while the short-line distances from Minneapolis are less than from Chicago, by from 15 miles in the case of Trinidad to 152 miles in the case of Colorado Springs. While it is true that mention was made in the report in *Minneapolis Traffic Asso. v. C., B. & Q. R. R. Co., supra*, of the lesser distance from Minneapolis to Denver than from St. Louis to Denver, the mere statement of the fact in the report does not support the respondents' contention that distance was the determining factor. The distances from Minneapolis to the Colorado common points south of Denver are greater than the distances from St. Louis to the same points; the difference, however, is not great in any instance, and the average difference in distance is so small that it can not, on principle, be held either to justify the breaking up of the long-established group basis or be made the determining factor in the present case.

Traffic from St. Paul to Denver and points north thereof handled in connection with either the Santa Fe or the Missouri Pacific must move over circuitous routes; the short line from Minneapolis to Denver is 894 miles, as compared with 1,216 miles over the Santa Fe and 1,263 miles over the Missouri Pacific. The Santa Fe distance is therefore 136 per cent and the Missouri Pacific distance

141 per cent of the short-line distance. To Colorado Springs, Pueblo, and Trinidad the distances in connection with the Santa Fe and Missouri Pacific are also considerably greater than the short-line distances between those points, the Santa Fe mileage to Trinidad being 105 per cent and to Colorado Springs 124 per cent of the short-line distance. The distances over the Missouri Pacific exceed the short-line distances in about the same degree as over the Santa Fe.

The short-line carriers from Minneapolis to Denver apply the common-point rate at intermediate points. While the Santa Fe and the Missouri Pacific apply at intermediate points the common-point rate on traffic from Chicago, Peoria, and St. Louis territories, it appears that it is only the rates from St. Paul to the common points south of Denver that they are disinclined to apply at intermediate points. If the changes proposed are permitted, the carriers intend to apply to the Commission for relief from the operation of the long-and-short-haul rule of the fourth section on traffic to Denver and points north. Because of the greater distances over their circuitous routes than over the short-line route, they are of the view that such relief would be granted, but believe also that the greater distances over their lines to common points south of Denver would not be deemed by the Commission sufficient to justify the granting of relief in respect of traffic to those common points.

The respondents urge that the normal basis for rates from St. Paul to the Colorado common points is the Chicago basis, subject to the combination of rates based upon Sioux City as maximum rates. To Sioux City, the nearest Missouri River crossing to St. Paul, the rates from St. Paul are and for some years have been the same as the rates from St. Louis to Kansas City and other Missouri River crossings. Regardless of what may be the theoretical basis for rates from St. Paul, the fact is that for more than 12 years prior to October 26, 1910, when the rates prescribed in the *Kindel case* became effective, the rates from St. Paul to the Colorado common points have been substantially the same as the rates from the Mississippi River crossings to the same destinations. And this basis has obtained for years, except between the date of the establishment of the rates in the *Kindel case* and the date of our order in the *Minneapolis case*, when the Mississippi River basis was prescribed as maximum rates from St. Paul to the Colorado common points and the former relative adjustment thus restored.

We have seen that when the carriers, including the principal respondents herein, established the reduced class rates to all Colorado common points, they also established from St. Paul territory to Denver and intermediate points north thereof the commodity rates applicable from St. Louis to Denver. These rates are still in effect, and it is intimated of record that the efforts made by shippers to

have the Mississippi River commodity rates applied from St. Paul to all Colorado common points led to the action proposed in the schedules under suspension. The breaking up of the Colorado common-point group with respect to rates from St. Paul would be in the nature of a rate innovation, since with respect to the rates from all other territories the Colorado common points are regarded as one group. The proposed change in the grouping would disrupt a relationship that has existed for many years. Moreover, on traffic to Utah common points and to points in Nevada and California, the rates from St. Paul and Minneapolis are the same as those from St. Louis.

The respondents do not contend that the rates from St. Paul to common points south of Denver are unduly low or unremunerative. The differences in distances in favor of St. Louis, while not negligible, are insufficient to justify breaking up the Colorado common-point group and the increased rates proposed to the common points south of Denver. The apprehension that these comparatively slight differences in distance in favor of St. Louis may result in a complaint from that point is a matter that can be met when it arises. As a mere possibility, however, it can not be said to afford justification for the proposed changes. We are of the opinion, and so find, that the evidence adduced by the respondents in support of the proposed change in the rates to the Colorado common-point territory and the increased rates resulting therefrom is insufficient to sustain the burden of proof imposed upon them by the statute; we also find upon the record that any rates for the future from the St. Paul territory to the Colorado common-point territory in excess of those in effect at the same time over those routes from St. Louis will be unjustly discriminatory rates. The respondents will, therefore, be required to cancel the schedules under suspension and they will furthermore be required to maintain, and for a period of not less than two years to apply to the transportation of traffic moving under class rates from the St. Paul rate territory to all Colorado common points, rates not in excess of those contemporaneously maintained by them from St. Louis.

An order will be entered accordingly.

37 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 619.
LUMBER RATES TO EASTERN CITIES.

Submitted October 14, 1915. Decided December 18, 1915.

Proposed increased rates on lumber of all kinds from points on the Tremont & Gulf, Louisiana & Arkansas, and other lines of railway in Louisiana and Arkansas to Baltimore, Philadelphia, New York, Boston, and other eastern destinations taking the same rates found to be justified, and order suspending their operation directed to be canceled.

R. Walton Moore and *F. W. Gwathmey* for Vicksburg, Shreveport & Pacific Railway Company.

B. S. Atkinson for Louisiana & Arkansas Railway Company.

J. H. Shaw for Tremont & Gulf Railway Company.

R. H. Kelly for Tremont Lumber Company.

G. F. Thomas for Crossett Lumber Company, Huie-Hodge Lumber Company, and J. A. Adams Sons & Company.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

The tariff here under suspension is "Vicksburg, Shreveport & Pacific Railway: Supplement No. 3 to I. C. C. No. 2746." It was filed to become effective April 15, 1915, but has been by our orders suspended in operation until January 30, 1916. It provides for increased rates on lumber, both pine and other kinds, from points on the Vicksburg, Shreveport & Pacific Railway and connections in Louisiana and Arkansas to destinations east of the Buffalo-Pittsburgh line, including the Virginia cities in the south and certain points in Canada on the north. Baltimore, Philadelphia, New York, and Boston will be referred to in the report as typical destinations, although the proposed rates apply also to many other eastern points taking the same rates or arbitraries higher, as provided for in east-bound guidebooks.

The Vicksburg, Shreveport & Pacific extends west from Vicksburg, Miss., to Shreveport, La., a distance of 172 miles. Its connections involved are the Tremont & Gulf; Arkansas, Louisiana & Gulf; Louisiana & Arkansas; Alexandria & Western; North Louisiana & Gulf; Tiega & Southeastern; Ouachita & Northwestern; Louisiana & North West; Louisiana Railway & Navigation Company; and the Sibley, Lake Bisteneau & Southern Railway company, one of the

constituent lines of the Shreveport, Alexandria & Southwestern railway system. Of these the Louisiana & Arkansas, Sibley, Lake Biste-neau & Southern, Louisiana & North West, Tremont & Gulf, Ar-kansas, Louisiana & Gulf, and Louisiana Railway & Navigation Com-pany connect directly with the Vicksburg, Shreveport & Pacific. The others connect with the direct connections named. These vari-ous connecting lines are really the principal respondents, as perhaps 95 per cent of the lumber involved is pine and only a small tonnage of pine originates on the Vicksburg, Shreveport & Pacific.

The territory of origin may be described generally as including a large part of Louisiana and the southern part of Arkansas and more specifically as being bounded on the south by the line of the Lou-isisiana Railway & Navigation Company and extending north to Hope, McNeil, and Monticello, Ark., on the lines of the Louisiana & Arkan-sas, Louisiana & North West, and the Arkansas, Louisiana & Gulf railways, respectively.

The proposed increases are not uniform, as will appear from the following table. Rates are stated in cents per 100 pounds.

	To Baltimore.		To Philadel- phia.		To New York.		To Boston.	
	Pres- ent.	Pro- posed.	Pres- ent.	Pro- posed.	Pres- ent.	Pro- posed.	Pres- ent.	Pro- posed.
A. From stations on the V., S. & P. and T. & G.; and stations on the A., L. & G., Shops, La., to Ham- burg, Ark., inclusive:								
Pine.....	Cents. 30	Cents. 35	Cents. 1 31	Cents. 1 35	Cents. 1 33	Cents. 1 35	Cents. 37	Cents. 39
Other lumber.....	32	35	33	35	35	35	37	39
B. From stations on the L. & A., N., L. & G., T. & S. E., S., L. B. & S., O. & N. W., L. & N. W., L. R. & N. Co., and stations on the A., L. & G. south of Shops, La:								
Pine.....	32	35	33	35	35	35	37	39
Other lumber.....	32	35	33	35	35	35	37	39

¹Also from stations on the Ouachita & Northwestern.

For the purpose of convenience, unless otherwise stated, future reference in the report to the Tremont & Gulf will embrace also the other roads listed under item A, above, and reference to the Louisiana & Arkansas will likewise include all other roads shown under item B.

The respondents state that the proposed rates will bring about a much needed equalization in rates between points on the lines of the different respondents and also between points on the lines of all of the respondents and other lines serving the same general territory. The rates on pine from stations on the Tremont & Gulf are, as will appear from the table, 2 cents per 100 pounds lower than from sta-tions on the Louisiana & Arkansas to Baltimore, Philadelphia, and New York, and are the same as from Louisiana & Arkansas stations

to Boston. This difference in rate will be corrected by the proposed tariff. The Chicago, Rock Island & Pacific and the St. Louis, Iron Mountain & Southern railways serve the same general territory as the respondents and in many cases the same stations. Effective March 1, 1915, the rates from points on these lines were increased to the basis now proposed by the respondents. We declined to suspend those increased rates, although protests against them were filed with us. The proposed rates would therefore have the effect of making the rates from points on all of the respondents' lines the same as from points on the lines of the Rock Island and Iron Mountain. The proposed rates would also be the same as from many points on other lines in the southwest, including the Texas & Pacific, Morgan's Louisiana & Texas Railroad & Steamship Company, and Kansas City Southern railways.

Another purpose of the respondents in filing the proposed rates is to establish what they contend would be a reasonable relationship between the rates from lumber-producing sections east and west of the Mississippi River, respectively. To points in central freight association territory rates from points on the respondents' lines west of the river are 2 cents per 100 pounds higher than from points east of the river. On some of the traffic here involved to eastern trunk line territory certain of the respondents' rates appear to be the same as the rates from east of the river. Others of the respondents' rates appear to be higher on certain of the traffic than from east of the river. The respondents' intention was to establish on this eastern trunk line territory traffic from points on all of their lines a differential over the rates from east of the river, corresponding to the differential basis on traffic to central freight association territory. It is not stated by the respondents, however, that either this differential or the proposed increase is in all cases 2 cents. On pine lumber from Tremont & Gulf stations both the increase and differential appear to be 5 cents to Baltimore and 4 cents to Philadelphia. The respondents explain that the Baltimore rate is increased from 30 to 35 cents because an increase of 2 cents in the Baltimore rate would not cure certain existing fourth section violations with respect to that part of the lumber to Baltimore which is routed via Cincinnati and Buffalo-Pittsburgh territory. The through rate to Pittsburgh, made on the Cincinnati combination, was at the time of the hearing $33\frac{1}{2}$ cents. In *Rates on Lumber from Southern Points*, 34 I. C. C. 652, decided since the hearing in this case, we permitted a maximum increase of 1 cent in the rates to north bank Ohio River crossings, including Cincinnati, which had the effect, the respondents state, of increasing the through charge to Pittsburgh to $34\frac{1}{2}$ cents.

The protestants suggest that these alleged fourth section violations, if they exist, are of minor importance, as but comparatively little lumber to eastern trunk line territory is routed via Cincinnati or other river gateways. The respondents contend in reply that aside from the fourth section question the 35-cent rate to Baltimore can not be held unreasonable by comparison with the 34½-cent rate now in effect to Pittsburgh, in view of the comparative distances to the respective points. From Powells, La., a representative point of origin, the short-line distances are 1,178 miles to Pittsburgh and 1,256 miles to Baltimore. The Pittsburgh distance is said to be figured via Vicksburg, Meridian, Chattanooga, and Cincinnati, and the Baltimore distance via Meridian, the Southern Railway and Potomac Yards, the respective routes of movement of the bulk of the traffic.

Powells is a central station on the Vicksburg, Shreveport & Pacific and was referred to as a representative point of origin at the hearing. It has been stated that practically no pine lumber originates on the Vicksburg, Shreveport & Pacific. The respondents therefore state that their reference to Powells as a representative point is most favorable to the protestants, as most of the lumber involved originates on other lines to the west of Powells. It is said that the Louisiana & Arkansas, for instance, is about 200 miles in length, and that lumber originating on that road is hauled first to Sibley, La., the junction point with the Vicksburg, Shreveport & Pacific, thence eastward through Powells.

The respondents further state that not only the Buffalo-Pittsburgh rate but the rates generally to central freight association territory are the straight combinations on the recognized river gateways. The respondents' rates to Baltimore, Philadelphia, New York, Boston, and other points in eastern trunk line territory, on the other hand, are through rates made by the addition of arbitraries to the rates to eastern gateways, such as Potomac Yards, and are lower than the river gateway combinations in practically all cases. Thus the proposed rates on all kinds of lumber are, as already shown, 35 cents to Baltimore, Philadelphia, and New York, and 39 cents to Boston. From Powells the combinations are, via Cairo, 41.4 cents to Baltimore, 42.4 cents to Philadelphia, 44.4 cents to New York, and 46.4 cents to Boston; and via Cincinnati, 40.3 cents, 41.3 cents, 43.3 cents, and 45.3 cents, respectively.

The respondents also urge that the present rates are unnecessarily low and are noncompensatory for the service performed. In this connection they call attention to the additional service to and the transfer across the river at Vicksburg involved in the transportation of this traffic from west of the river, compared with the service from

east thereof, although, as explained, the respondents' present rates are in many cases the same as apply from east of the river.

The protestants, whose mills are on the Tremont & Gulf, concede their advantage over competitors on the Louisiana & Arkansas in the marketing of pine lumber in Baltimore, Philadelphia, and New York, where, as explained, the rate is 2 cents per 100 pounds in their favor, and state that they meet substantially no competition from mills on the Louisiana & Arkansas in the sale of pine at those points. They further state that at Boston, where the rate on pine is the same from Tremont & Gulf as from Louisiana & Arkansas mills, their principal competition is with the Louisiana & Arkansas mills. Their attitude in this connection is that while the proposed rates would cure this inequality as between shippers on their various lines, it would also injure shippers on all of the respondents' lines by reason of the proposed increased rates from points on all of their lines and the proposed differential over mills east of the river, with which mills the respondents' mills are in active competition.

It is represented on behalf of the protestants that the proposed rates would work an especial hardship at this time, because of the fact that heretofore the mills in the southwest have been cutting short-leaf pine and are now just about to enter the long-leaf belt. The long-leaf pine is particularly marketable in New England, where rift flooring made of that lumber is much in demand, and where considerable effort has been expended by the protestants in the building up of that trade. Rift flooring is distinguished from the ordinary flooring in that it is grained and laid on edge. It is sometimes spoken of as quarter-sawed flooring. The increase from mills on all of the respondent lines to Boston, on all kinds of lumber, is, as shown in the table, uniformly 2 cents per 100 pounds. The average carload weight of the lumber here involved is about 45,000 pounds. The increase to Boston would therefore be about \$9 per car.

It seems apparent from the foregoing facts that by these proposed increased rates a substantial inequality between mills on the Tremont & Gulf and Louisiana & Arkansas mills, and also between mills on the lines of all of the respondents and of the Rock Island, Iron Mountain, and other railways in the southwest would be corrected. The proposed readjustment would also make applicable the same rate on pine as on other kinds of lumber. To the extent that these changes can be brought about without imposing upon the protestants rates unreasonable in and of themselves we think they should be allowed to take effect. The final question therefore is whether in and of themselves and by comparison with rates in the same general territory, made under substantially similar circumstances and conditions, the proposed rates of 35 cents on all kinds of lumber to Balti-

more, Philadelphia, and New York and of 39 cents on all kinds of lumber to Boston, are reasonable.

Numerous exhibits containing comparisons of the proposed rates with rates between other points have been filed by both parties to the record. The following table shows the distances, rates in cents per 100 pounds, and rates per ton-mile from Powells to the points here in question; from Powells to certain points in central freight association territory; and between certain other points:

¹ Via Potomac Yards.

² Proposed rates.

³ Via Cincinnati.

By comparison with the other rates shown in this table the proposed rates do not appear to be unreasonable. Neither do they appear to be unreasonable when compared with the rates from Georgia, Florida, and Alabama to Washington and Baltimore which we permitted to become effective in *Lumber Rates from Southern Mills to Eastern Points*, 27 I. C. C., 189. From representative points on the respective lines of origin those rates, as shown in the report, yielded average per ton-mile revenues of from 5.55 to 6.58 mills for average distances of from 792 to 887 miles.

Considering all the facts of record, it is our finding and conclusion that the respondents have justified the proposed rates, and an order vacating the order of suspension will be entered.

27 I. C. C.

No. 7412.
PINE BLUFF TRAFFIC BUREAU
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted October 14, 1915. Decided December 22, 1915.

Upon petition that the defendant rail carriers operating between points in the east and Memphis, Tenn., be required to establish through routes and joint rates from eastern points to Pine Bluff, Ark., via Memphis, in connection with the Memphis & Arkansas City Packet Company, which operates a steamboat between Memphis and Rosedale, Miss., and the Pine Bluff & Rosedale Packet Company, which operates a steamboat between Rosedale and Pine Bluff; and that such joint rates be less than the present all-rail rates; *Held*, That the interest of the public does not require that through routes and joint rates be established while prevailing conditions continue. Complaint dismissed.

Rowell & Alexander and W. M. Taylor for complainant.

R. Walton Moore, E. H. Hart, and William Burger for defendants.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

The complainant is a voluntary organization composed of shippers and receivers of freight located at Pine Bluff, Ark. In its complaint, filed October 20, 1914, as amended, it prays that the defendant rail carriers, operating between eastern points and Memphis, Tenn., be required to establish through routes and joint rates from defined territories east of the Mississippi River to Pine Bluff via Memphis, in connection with the Memphis & Arkansas City Packet Company, which operates a steamboat on the Mississippi River, and the Pine Bluff & Rosedale Packet Company, which operates a steamboat on the Arkansas River. It is further asked that the rail-and-water rates thus established be made somewhat lower than the present all-rail rates. The defendants are 21 railroads operating east of the Mississippi River, the two packet companies above named, the Lee line, and the River & Rail Storage Company of Memphis. The rail lines west of the river are not defendants.

Pine Bluff, a city of approximately 25,000 inhabitants, is located on the Arkansas River 110 miles from its mouth. It is served by the St. Louis, Iron Mountain & Southern Railway and the St. Louis Southwestern Railway. Rail traffic from Memphis to Pine Bluff is

commonly hauled by the St. Louis, Iron Mountain & Southern Railway from Memphis to Fair Oaks, Ark.; thence via the St. Louis Southwestern Railway to Pine Bluff, the distance by this route being 155 miles. Carload shipments arriving at Memphis from the east and consigned to Pine Bluff are switched from the tracks of the eastern carriers to the tracks of the St. Louis, Iron Mountain & Southern Railway. Less-than-carload shipments are in some instances switched in a similar manner, but usually they are drayed across the city by the Patterson Transfer Company, which charges 3 cents per 100 pounds for the service, each of the connecting carriers paying one-half of this charge.

The Memphis & Arkansas City Packet Company, a corporation, owns and operates the steamer *Kate Adams*, which plies on the Mississippi River between Memphis and Arkansas City, Ark., a distance of 252 miles. The company has a capital stock of \$50,000. The *Kate Adams* is said to be worth \$75,000. Two round trips per week are made between Memphis and Arkansas City, the boat leaving Memphis every Monday and Thursday. On its Thursday trip it connects at Rosedale with the steamer *Lightwood*, of the Pine Bluff & Rosedale Packet Company. Rosedale is located on the Mississippi River near the mouth of the Arkansas River, 52 miles north of Arkansas City.

The Pine Bluff & Rosedale Packet Company is a corporation with a capital stock of \$5,000. It owns and operates the steamer *Lightwood*, which is scheduled to make one round trip per week between Pine Bluff and Rosedale. The *Lightwood* has a capacity of 250 tons, and its value is estimated at \$10,000.

None of the packet companies operates a through boat service from Memphis to Pine Bluff, all freight carried by water between those points being transferred at Rosedale. Shipments consigned from Memphis to Pine Bluff are carried by the *Kate Adams* from Memphis to Rosedale, where they are transferred to the *Lightwood*. The transfer is usually effected by bringing the two boats together and passing the freight over their rails. In case the *Lightwood* is not at Rosedale when the *Kate Adams* arrives, the freight is put into a small warehouse on the river bank to await her arrival. Articles that are unusually heavy or bulky can not be placed in the warehouse, but are left on the river bank in charge of a watchman.

Although the Arkansas River is navigable practically all the year, the *Lightwood* does not run regularly. It is stated in the complaint that the Pine Bluff & Rosedale Packet Company operates approximately nine months of the year, and the testimony supports that statement. Witnesses for both the complainant and the defendant rail carriers testified that the service rendered by the Pine Bluff & Rosedale Packet Company is not dependable, and one of

the complainant's principal witnesses characterized its operation as a "fly by night business." During the summer of 1914 the *Lightwood* was taken out of commission for repairs and did not operate for a number of weeks, and at the time of the hearing floods prevented its operation. Although the company's schedule provides for one round trip per week between Pine Bluff and Rosedale, only 57 trips were made between January 16, 1914, and May 29, 1915, a period of approximately 72 weeks. When the *Lightwood* is for any reason out of commission or not maintaining its regular schedule, notice is sent to the Memphis & Arkansas City Packet Company not to accept freight at Memphis for delivery in Pine Bluff. It does not appear that other boat service is substituted when the *Lightwood* is out of commission.

The boat lines are interested chiefly in the transportation of freight in less-than-carload quantities. Carload shipments are carried by water only occasionally, probably because of the inability of the boat lines to meet the rates made by the railroads on commodities in carloads. It is said that from 15 to 50 tons of freight per week move by boat from Memphis to Pine Bluff and that of this amount only about 2 tons are brought into Memphis by rail. In other words, the shipments now carried to Pine Bluff by boat either originate in Memphis or are brought there by water, and practically all traffic which is shipped to Pine Bluff from the east moves all rail.

Most of the shipments carried by the boat lines move on class rates. The packet companies publish rates from Memphis to Pine Bluff on commodities rated in the first five classes in western classification, as follows:

Class	1	2	3	4	5
Rate.....	45	35	30	25	20

These are the only rates published by the boat lines. The rates on commodities not covered by these class rates, such as brick and heavy machinery, are determined by special contract with the shipper.

Little evidence was introduced by the complainant in support of its allegation that the joint rail-and-water rates should be less than the all-rail rates. Joint through all-rail rates are published from defined territories in the east to Pine Bluff, and they are materially lower than the all-rail rates made by combination on Memphis. In most instances they are lower than the through rates made by adding to the all-rail rates to Memphis the boat lines' rates beyond, while in other instances the rail-and-river combination is lower. The following table, taken from one of the complainant's exhibits, shows the joint through all-rail rates to Pine Bluff from typical territories in the east, the all-rail combination rates, and the rail-and

river combination rates. Only the rates of the first five classes are given.

To Pine Bluff, Ark., from—	1	2	3	4	5
Atlanta-Knoxville territory:					
Joint through rates, all rail.....	116.0	98.0	75.0	57.0	42.0
Combination on Memphis, all rail.....	170.0	148.0	122.0	91.0	75.0
Combination on Memphis, rail and river.....	145.0	123.0	107.0	80.0	68.0
Chicago territory:					
Joint through rates, all rail.....	120.0	101.0	77.0	59.0	44.0
Combination on Memphis, all rail.....	155.0	125.0	100.0	79.0	64.0
Combination on Memphis, rail and river.....	130.0	100.0	85.0	68.0	57.0
Louisville territory:					
Joint through rates, all rail.....	112.8	95.6	72.2	54.8	40.7
Combination on Memphis, all rail.....	135.0	110.0	90.0	71.0	57.0
Combination on Memphis, rail and river.....	110.0	85.0	75.0	60.0	50.0
Milwaukee territory:					
Joint through rates, all rail.....	120.0	101.0	77.0	59.0	44.0
Combination on Memphis, all rail.....	161.0	130.0	104.0	82.0	66.0
Combination on Memphis, rail and river.....	136.0	105.0	89.0	71.0	59.0
Nashville territory:					
Joint through rates, all rail.....	106.0	90.0	69.0	52.0	39.0
Combination on Memphis, all rail.....	120.0	98.0	80.0	63.0	50.0
Combination on Memphis, rail and river.....	95.0	73.0	65.0	52.0	43.0
Birmingham-Chattanooga territory:					
Joint through rates, all rail.....	110.0	93.0	71.0	54.0	40.0
Combination on Memphis, all rail.....	145.0	125.0	99.0	79.0	63.0
Combination on Memphis, rail and river.....	120.0	100.0	84.0	68.0	56.0
Pittsburgh territory:					
Joint through rates, all rail.....	152.7	132.4	98.8	73.2	57.1
Combination on Memphis, all rail.....	161.0	130.0	104.0	82.0	66.0
Combination on Memphis, rail and river.....	136.0	105.0	89.0	71.0	59.0

It will be observed that the joint all-rail rates from Atlanta-Knoxville territory, Chicago territory, Milwaukee territory, and Birmingham-Chattanooga territory are generally lower than the rail-and-river combination, while from Louisville, Nashville, and Pittsburgh territories the rail-and-river combinations are generally somewhat lower. The rail-and-river combination rates shown in the table, however, do not include charges for transferring less-than-carload freight from the rail lines to the river bank in Memphis, nor do they include the cost of loading freight onto the boats, each of which services would cost at least 3 cents per 100 pounds.

The defendants contend at some length that the all-rail rates to Pine Bluff are not unreasonably high. The complainant, indeed, expressly disclaims any intention of questioning the reasonableness of the all-rail rates and rests its case largely on the general principle that water transportation is ordinarily less expensive than rail transportation. Assuming this to be correct, we could not determine on the present record how much lower the rail-and-water rates should be. It affirmatively appears that they would have to be considerably lower than the all-rail rates in order to induce shippers to use them. The present all-rail class rates from Memphis to Pine Bluff are on a 70-cent scale, as compared with a 45-cent scale by boat, making the rail rate, first class, 55 per cent higher than the water rate. The less-than-carload traffic from Memphis to Pine Bluff by rail greatly exceeds the amount carried by water, indicating that even with this

marked difference in the rates shippers prefer the rail route. As one of the complainant's principal witnesses said:

The present boat rates from Memphis to Pine Bluff are not enough lower than the all-rail rate to justify us in paying insurance and being subjected to some little delay that might occur in these transfers, or this transfer at Rosedale, and perhaps would not work any saving as against the all-rail rate.

In the amended complaint it is asked "that a physical connection be declared to exist between the railroads entering Memphis and the packet steamboat and barge lines." and a large part of the complainant's testimony consists of descriptions of the facilities for the interchange of traffic between the rail lines and the boat lines at Memphis.

The River & Rail Storage Company owns a warehouse and "incline" on the river bank at Memphis, which constitute the "physical connection" referred to in the amended complaint. The River & Rail Storage Company is a private corporation with a capital stock of \$60,000. Its warehouse is a one-story brick building which covers 120,000 square feet. The in and out tonnage handled by the company consists of about 5,000 to 6,000 cars annually. Side-tracks of the St. Louis & San Francisco Railroad extend to the warehouse, and 45 cars can be placed on the tracks immediately adjoining the warehouse on the east. On the north side of the building is a large platform, upon which freight can be conveniently unloaded from the railroad cars. The river bank is approximately 65 feet high at this point, and an incline about 130 feet long leads from the platform to a wharf boat at water level. Two cars, each of 3,000 pounds capacity, run up and down the incline carrying freight to and from the river boats. Any of the boats plying on the Mississippi stop at the incline to receive or deliver freight whenever they have occasion to do so, and the River & Rail Storage Company holds itself out to store commodities, or haul them over its incline, for any person who will pay its charges. Some commodities, however, it refuses to handle, either because of the rules of insurance companies or because of the limited capacity of the incline cars. Cotton, oils, hay, and explosives are among the articles which are refused because of the insurance rules; while cattle, long rails, heavy machinery, and vehicles are not accepted because the incline cars are too small to accommodate them.

Less-than-carload freight arriving in Memphis from the east and consigned to Pine Bluff could be switched from the tracks of the other carriers to the St. Louis & San Francisco Railroad, hauled by that carrier to the warehouse, and transferred over the platform and incline to the boats; or it could be drayed from the freight stations of the other carriers directly to the warehouse. In either case

the storage company would expect to receive not less than 3 or 4 cents per 100 pounds for handling the freight over its incline, and the Patterson Transfer Company would charge from 5 cents to 7½ cents per 100 pounds for draying commodities from the depots of the rail carriers to the warehouse. Freight arriving in Memphis just after the departure of the *Kate Adams*, and consigned to Pine Bluff, would necessarily remain in the warehouse for nearly a week. The warehouse would expect to receive a reasonable charge for the storage. As the charges imposed by the warehouse vary according to the nature of the commodity offered for storage, the exact amount of the storage charges could not be ascertained until the arrival of the freight at the warehouse.

It is unnecessary to cite the long list of recent cases in which the Commission, following the declared policy of Congress, has expressed itself as favoring the development of navigable rivers to the fullest possible extent. In proper cases, where it appeared that the interest of the public demanded it, we have required rail carriers to establish through routes and joint rates in connection with boat lines. A careful examination of the record in the present case fails to show, however, that the public interest demands the establishment of the joint rates which the complainant seeks while prevailing conditions continue. It clearly appears that the establishment of through routes would be of no benefit to the complainant unless at the same time joint rates were established considerably lower than the present all-rail rates, yet the record fails to show how much lower the rail-and-river rates should be, if any. Officers of the Pine Bluff & Rosedale Packet Company, which was made a defendant, appeared as witnesses for the complainant and expressed themselves as favoring the establishment of through routes and joint rates as requested. The Memphis & Arkansas City Packet Company, however, is opposed to having the through routes established, and is unwilling to subject itself to the jurisdiction of the Commission. Aside from the witnesses associated with the boat lines only four business men of Pine Bluff testified for the complainant, and we fail to find in their testimony anything to indicate that they or the people of Pine Bluff generally are particularly interested in having the through routes and joint rates established.

In *New York Dock Ry. v. B. & O. R. R. Co.*, 32 I. C. C., 568, at page 573, we said:

The law does not require us to establish through routes and joint rates in all instances where carriers have neglected or refused to do so, but does empower us to do so in proper cases, with the manifest intent of giving effect to the general purposes of the act by securing reasonable facilities to the public and preventing unreasonable and unjust rates, practices, and discriminations. Where neither the interest of the public nor the ends of justice as between

parties directly interested will be promoted by such establishment, a proper case for the exercise of the authority invoked has not been shown. *Loup Creek Colliery Co. v. V. Ry. Co.*, 12 I. C. C., 471-477. Each case must be tested by the needs and convenience of the community served, and the Commission will give heed to the peculiar facts of the case in the exercise of its discretionary power.

In the present case it appears that the service rendered by one of the boat lines is irregular and unsatisfactory; that the method of interchanging freight at Rosedale is primitive; that the interchange of traffic between the rail lines and the boat line at Memphis is expensive; that the charges of the warehouse company are variable; and that a number of commodities can not be handled by the agency of transfer suggested by the complainant; and that the all-rail transportation is satisfactory. Furthermore, since the River & Rail Storage Company is not subject to the jurisdiction of this Commission, we would have no control over its charges. The complainant suggests that the charges imposed by the warehouse company, both for the incline service and for storage, could be added to the transportation rates and paid by the shipper, but since the charges vary it is obvious that many practical difficulties would be encountered in endeavoring to compile tariffs from which a shipper could ascertain in advance the exact through charge for the rail-and-river service. Moreover, such tariffs could not be published without first obtaining more definite information as to the commodities which the River & Rail Storage Company is able to handle.

The defendants contend that the Commission has no authority to establish joint rail and-river rates because of the unwillingness of the Memphis & Arkansas City Packet Company to participate in the joint rates or to subject itself to the jurisdiction of the Commission. This contention is based principally on the fact that the sixth section of the act as amended provides that the Commission, in establishing through routes and joint rates between rail lines and water lines, may "determine all the terms and conditions under which such lines shall be operated in the handling of the traffic embraced." It is pointed out that the Memphis & Arkansas City Packet Company would probably be unwilling to conform to any conditions which the Commission might prescribe. We deem it unnecessary in the present case to dwell upon this question of jurisdiction.

Upon consideration of all the evidence of record we are of opinion and find that the complainant has failed to show that the refusal of the defendant rail carriers to establish through routes and joint rates by rail and river as requested is unreasonable.

The complaint will be dismissed.

No. 7653.
UNION LUMBER COMPANY
v.
GULF, COLORADO & SANTA FE RAILWAY COMPANY.

Submitted December 1, 1915. Decided December 24, 1915.

Upon complaint that the defendant unlawfully refuses to switch cars to and from the complainant's sawmill at Milvid, Tex., or to pay the complainant for performing the service with its own power, and that the defendant unjustly discriminates against the complainant in that it pays allowances to the complainant's competitors for performing switching services under similar circumstances; *Held*, That the evidence fails to show that the defendant's refusal to perform a switching service for the complainant or to pay the complainant for performing the service for itself is unlawful; and that it is not shown that the complainant is subjected to undue discrimination within the meaning of the act.

J. M. Simmons for complainant.

J. J. Coleman, J. S. Hershey, Robert Dunlap, T. J. Norton, and F. E. Andrews for defendant.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The complainant owns and operates a sawmill at Milvid, a station on the line of the defendant in the southern part of the state of Texas. The mill is not on the defendant's tracks, but is reached by a siding 4,250 feet long, which is now owned by the complainant, and formerly was a part of the Riverside & Gulf Railway, a logging road 12 miles long, described in *The Tap Line Case*, 23 I. C. C., 277, 334. On March 1, 1913, the complainant purchased the rails, right of way, equipment, and other property of the tap line, but without purchasing the tap-line company's charter; the line has not since been operated as a common carrier by the complainant, and, in fact, as shown of record, that status has not been claimed for it since 1908.

Shortly after the complainant had acquired the mill, the tracks of the tap line, and the other property of the Miller & Vidor Lumber Company at this point, the complainant requested the defendant to do the switching between the mill and its own tracks at Milvid or to make the complainant an allowance for doing it with its own power. The request was renewed at various times, but the defendant has refused either to perform the service or to pay the complainant for doing the switching. The prayer of the petition is that the defendant

shall be required either to do the switching in the future or to pay the complainant for doing it; the petition also prays for damages in the sum of \$5,000 in respect of switching done in the past by the complainant for itself, after the defendant had refused upon request to perform the service for the complainant.

One of the complainant's contentions is that the transportation service begins at its mill, and that the defendant is required under its obligations as a common carrier to do the switching or to pay the complainant therefor under section 15 of the act. In support of this view the complainant relies upon what is said in *The Tap Line Case*, *supra*, as follows. p. 293:

In all cases it is apparently the practice of the trunk lines, where no allowance is made, to set the empty car at the mill and to receive the loaded car at the same point. Indeed, they do this in many cases even when an allowance is made to the tap line. But whenever this service is performed by the trunk line, it is included in the lumber rate and is done without additional charge. In some instances the switch or spur track connecting the mill with the trunk line is as much as 3 miles long. In other words, by their common practice the public carriers interpret the lumber rates as applying from mills in this territory apparently as far as 3 miles from their own lines. So far as the manufactured lumber is concerned, it may therefore be said that where a mill has a physical connection with a trunk line and is not more than 3 miles distant the transportation offered by the trunk line commences at the mill. If, therefore, a lumber company, having a mill within that distance of a trunk line, undertakes, by arrangement with the trunk line, to use its own power to set the empty car at the mill and to deliver it when loaded to the trunk line, it is doing for itself what the trunk line, under its tariffs, offers to do under the rate. In such a case the lumber company may therefore fairly be said to furnish a facility of transportation for which it may reasonably be compensated under section 15, whether its tap line is incorporated or unincorporated.

Immediately following that statement, however, the report proceeds with this further expression. p. 294:

In other words, the lumber company thus does for itself what the trunk line does with its own power at other mills without additional charge, and what it must therefore do for the particular lumber company without additional charge. Under such circumstances we think the lumber company, under section 15, may have reasonable compensation when it relieves the trunk line of the duty.

In that investigation it was largely the practices of the Kansas City Southern, the St. Louis, Iron Mountain & Southern, and the Chicago, Rock Island & Pacific railways that were under consideration, those lines being referred to in the report, p. 283, as the "three principal trunk lines whose tracks extend through the territory in question." It was conceded in the case by all concerned that confusion and inequalities existed throughout that lumber-producing district, and that the policy of the trunk lines in their relations with tap lines and lumber companies operated to the advantage of some

shippers and to the prejudice of others. Services were being performed for some lumber companies that were not offered to others, and allowances were being made to some tap lines that were denied to others; and the record showed that a relation existed between the trunk lines and lumber companies and tap lines in respect of these matters that required control and regulation. Dealing with the special facts there before us, and in order to remove so far as possible the inequalities which the practices of these trunk lines had occasioned, the general statement relied upon here was made. But what was there said could have no application, and has no application, to a trunk line which had not resorted to such practices and has not since engaged in them; and it may not fairly be inferred from anything that was said in *The Tap Line Case, supra*, that a carrier not then, or for some years prior thereto, engaged in such practices should be required to set up in the future, in connection with its lumber traffic, the relations that were the subject of criticism and condemnation in that proceeding.

Until 1908 divisions were accorded by the defendant to 15 tap lines serving lumber mills upon its lines, but during that year they were discontinued. *Star Grain & Lumber Co. v. A., T. & S. F. Ry. Co.*, 17 I. C. C., 338, 353. The report in *The Tap Line Case, supra*, was promulgated on April 23, 1912. At that time, therefore, and for about four years prior thereto, the defendant had no divisional arrangements with any tap line. The record also shows that it did not, either then or at any previous time, pay allowances to lumber companies for switching their own traffic between their mills and the line of the defendant. It also shows that neither at that time nor in its prior practice did it do such switching for lumber companies, either free or at a charge. It appears also that there are not now, and there never have been, joint rates from the complainant's mill to any point on or off the line of the defendant.

At the time the report in *The Tap Line Case, supra*, was announced there were and now are about 20 lumber mills in Texas and Louisiana that have spur tracks from their mills to the defendant's rails, on which the several lumber companies do the switching with their own power under conditions substantially similar to those surrounding the performance of the same service by the complainant with its own power between its mill and the tracks of the defendant. Lumber shipped from its mill is billed from the defendant's station at Milvid on rates that apply from that point, under its tariff, and not from the mill. It thus becomes apparent that the practices of the defendant in connection with the lumber industry in the states mentioned have differed widely, except as hereinafter explained, from the practices, as disclosed in *The Tap Line Case, supra*, of the

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Rock Island, the Frisco, and the Kansas City Southern in handling their lumber traffic in that producing territory. What was said in that case at the point above quoted had relation, as just stated, to the practices of those three lines and was not intended to apply to the defendant or any other line in that territory on which such practices did not obtain.

Under the facts shown of record we are of opinion and find that the defendant is under no obligation to perform the switching service requested of it by the complainant, and that the defendant's refusal to pay the complainant for doing the work itself is not unlawful.

The complainant contends also that it is unjustly discriminated against by the course of the defendant in the premises. At the hearing, on information and belief, the complainant's representative named several lumber companies on the defendant's lines, which he asserted were receiving allowances from the defendant for switching services performed by the mill companies. On the brief, however, the alleged undue discrimination is predicated upon the payment of allowances to sawmill companies at Call, in the state of Texas, and at Oakdale, in the state of Louisiana. It appeared in evidence that no allowances, such as are requested by the complainant, were paid to the companies named by the complainant's witnesses except to those at Call and Oakdale.

At Call the defendant owns substantially all the tracks extending from its main line to the mill of the Kirby Lumber Company. The service performed by the latter company is for the most part over tracks owned by the defendant. Call is located on what was formerly the Beaumont, Gulf & Kansas City Railway, which the defendant purchased and made a part of its system. As a common carrier it is obligated to operate over the line purchased, and the defendant considered it to be more economical to compensate the lumber company for performing the switching service at that point than to perform the work itself. The allowance paid the lumber company is \$1 per car for switching over a distance of 3 miles. The allowance permitted to lumber companies under the second permissive supplemental order in *The Tap Line Case, supra*, is \$3 per car for a distance of over 1 mile and up to 3 miles. The figures submitted by the complainant show that it costs \$2.13 per car for it to make switch movements over the 4,250 feet of track from its mill to a connection with the complainant's tracks at Milvid.

The Forest Lumber Company and the Bowman-Hicks Lumber Company are reached both by the defendant and by the St. Louis Iron Mountain & Southern. Following an application by the Iron Mountain for authority to allow each of these companies \$1.50 per car, which was granted by the Commission, the defendant, in order to

million, and it was granted.

Do the circumstances stated constitute undue discrimination against the complainant within the meaning of the act? It is well settled that unless the circumstances and conditions of transportation are similar at two points no unlawful discrimination may properly be predicated upon different rates and practices. At Oakdale, where are located the mills of the Forest Lumber Company and the Bowman-Hicks Lumber Company, competition which does not exist at Milvid has forced upon the defendant the payment of the allowance above stated. At Call, where the last-named company also has a mill, the defendant is obligated to perform the service which it arranged with the lumber company to perform at a compensation apparently less than it would cost the defendant. If the defendant were to cease to perform the service, this complainant would not be benefited thereby. In other words, the discrimination alleged, if removed, would not operate to change the conditions.

The circumstances and conditions at the points where the allowances are made by the defendant are entirely different from those which obtain at the complainant's mill; and any resulting discrimination, we hold, is not undue within the meaning of the act.

The complainant further contends that the defendant joins in through rates with other trunk line carriers that do pay allowances to lumber companies which perform switching services under the same conditions as they are performed at Milvid, and that this constitutes unlawful discrimination. The testimony in behalf of the defendant is that where it joins in through rates with other carriers it does so only under the condition that it will not absorb any proportion of the compensation allowed the lumber concerns doing their own switching nor any proportion of divisional allowances to tap lines. These allowances it requires shall be borne by the carriers that serve the mills.

It follows from what has been said that the complaint should be dismissed, and it will be so ordered.

INVESTIGATION AND SUSPENSION DOCKET No. 627.
COAL FROM TOLUCA, ILL.

Submitted July 21, 1915. Decided December 18, 1915.

Proposed cancellation of joint rates which would result in increased rates on coal from Toluca, Ill., to interstate points on the Chicago, Milwaukee & St. Paul Railway found not justified.

C. W. Galligan for Chicago & Alton Railroad Company.

O. W. Dynes for Chicago, Milwaukee & St. Paul Railway Company.

Frank Crozier for Toluca Coal Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

By the tariff here under suspension it is proposed to cancel the joint through rates on coal in effect from mines on the line of the Chicago & Alton Railroad at Toluca, in the state of Illinois, to destinations on the lines of the Chicago, Milwaukee & St. Paul Railway in the states of Wisconsin, Iowa, and Minnesota. Feeling that its division out of these rates of \$5 a car was unremunerative, the Chicago & Alton had made demand upon the St. Paul for a division of 25 cents a ton. This being refused, the Alton then requested the cancellation by the St. Paul of the through rates.

If the suspended schedule be permitted to become effective the lawful through charge will be the combination of rates to and from Custer, in the state of Illinois, and the through charge will be increased by 28 cents a ton over the joint through rates in effect when the schedule was filed; but the amount of the increase would be somewhat modified by the fact that since the filing of the suspended schedule the joint through rates then in effect have been increased by from 5 to 10 cents a ton as the result of our findings in the *1915 Western Rate Advance Case*, 35 I. C. C., 497.

At the hearing no attempt was made by either line to justify the proposed increased charges. The sole fact developed was that the carriers were no longer in accord respecting their divisions of the existing rates: and on that question no record was made upon which we may properly enter an order adjusting the divisions.

We have repeatedly adverted to the impropriety of the cancellation of joint rates because of the failure upon the part of the participating carriers to agree upon divisions. It is not just to the

Commission to set its machinery in motion and to create a situation compelling a hearing and the making of a record only to develop the fact that there is such a controversy between the carriers. The proper course for carriers to pursue under such circumstances is to advise the Commission of their inability to agree upon divisions and to submit the matter to us for adjustment.

The tariff under suspension must be canceled, and such an order will be entered.

No. 7432.

JOHN J. FELIN & COMPANY, INCORPORATED,
v.
PHILADELPHIA & READING RAILWAY COMPANY.

Submitted May 6, 1915. Decided November 23, 1915.

Failure of defendant to make complainant an allowance for yardage services at Philadelphia, Pa., on interstate shipments of hogs not found unjustly discriminatory.

Hirschman & Drucker and *A. B. Hayes* for complainant.

W. L. Kinter for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the pork-packing business at Philadelphia, Pa. By complaint filed October 28, 1914, it alleges that defendant's failure to grant it an allowance of 8 cents per head, for yardage services performed by complainant at its plant in Philadelphia on interstate shipments of hogs, is unjustly discriminatory. Reparation is asked and the establishment of an allowance of 8 cents on every hog delivered by defendant at complainant's plant.

Complainant's plant abuts on the tracks of the Richmond branch of defendant's line. Besides its slaughterhouse, complainant has constructed unloading platforms, feeding and watering pens, and other customary conveniences for handling and caring for live stock, together with sidetracks connecting its plant with defendant's tracks. Complainant's purchases of live stock originate on various lines, but

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are all delivered by defendant and placed by defendant upon complainant's sidetrack. Prior to September 1, 1914, complainant unloaded all of its shipments and maintained its sidetracks and stockyards in good order and repair at its own expense. Since September 1, 1914, the Nicetown Stock Yards Company, which leased complainant's sidings and stockyards facilities, has performed the service of unloading and caring for live stock formerly performed by complainant.

Defendant has no large stockyards of its own at Philadelphia, and besides complainant serves only two large butchers at Philadelphia: Louis Burke and G. F. Pfund & Sons. There is another large private stockyard on defendant's line at North Philadelphia, Pa., operated by the North Philadelphia Drove Yards Company. Burke has a receiving pen connected with defendant's tracks by a private siding, and his hogs are unloaded in the same manner as complainant's. His plant is located about 2 city blocks from the siding, and the hogs, unloaded into his pen, are driven through the streets to his plant. Pfund & Sons have no private siding. Their live stock is delivered through the North Philadelphia Drove Yard, or the West Philadelphia Stock Yards on the Pennsylvania Railroad, and is driven through the streets of Philadelphia to their plant, which is located only a short distance from complainant's plant. A number of small butchers pursue the same course. Defendant has facilities for unloading stock in single-deck cars at a number of its stations and at Second and Berks streets, near complainant's plant, maintains pens and facilities for unloading about two carloads of stock, but these facilities are used very little.

Complainant pays the full published through rate on all shipments of live stock that it receives. The rate on hogs from Chicago, for example, has been 28 cents per 100 pounds, increased recently to 30.5 cents per 100 pounds. This rate was published in Pennsylvania Company tariff I. C. C. No. F-419, in which defendant concurred. The item naming the rate contained the following note:

Rates named in tariff to New York, N. Y.; Jersey City, N. J.; Philadelphia, Pa.; Baltimore, Md.; Washington, D. C.; and Lancaster, Pa., via the Union line include yardage charges at those points, but the expense of feeding, watering, etc., will be in addition to the through rates charged to those points.

The same tariff refers to Star Union Line tariff I. C. C. No. 12, which provides for the deduction of terminal and yardage allowances of 5 cents per 100 pounds on hogs delivered by the Pennsylvania Railroad at Philadelphia, West Philadelphia Stock Yards, Pa., and other points on its line before the through rates are prorated among the participating carriers. Similar allowances are provided for deliveries made by other carriers at various other eastern destina-

tions, not including defendant. The Pennsylvania Railroad publishes an allowance of 8 cents per head to the West Philadelphia Stock Yards for yardage services at West Philadelphia, and various other lines provide allowances for yardage service at eastern destinations. Defendant receives no terminal allowance for yardage on live stock from its connections and makes no such allowance to anyone on its line at Philadelphia.

Complainant urges that defendant maintains no stockyards at which complainant's live stock can be handled; that yardage service is included in and contemplated by the through rate; that such services are part of the services which defendant has agreed and undertaken to perform; and that defendant accordingly should compensate consignees who perform these services for it. An allowance of 5 cents per 100 pounds or 8 cents per head is asked both for past shipments and for the future.

Carriers of live stock unquestionably must provide suitable facilities for loading, unloading, and caring for live stock, including suitable pens, but not at every point on their lines where dealers in live stock choose to establish their plants. *Covington Stock Yards Co. v. Keith*, 139 U. S., 128. The facilities afforded by defendant for handling live stock at Philadelphia are not shown to be insufficient to meet the demands made upon them. Complainant has never sought to use defendant's facilities, but has chosen for its own convenience to provide private facilities of its own. They are mere plant facilities and accordingly do not entitle complainant to compensation for its service performed by means of them. Nor is defendant bound to make the allowance demanded merely because other carriers make allowances for yardage services at points on their lines. Complainant argues that Pfund & Sons receive shipments of live stock through the yards of the North Philadelphia Drove Yards at the same through rates as are paid by complainant, without paying unloading charges, but complainant also may use the yards at North Philadelphia.

We find upon all of the facts disclosed that defendant's failure to accord the allowance in issue is not shown to have been or to be unjustly discriminatory and the complaint will be dismissed.

No. 7091.
CHARLES R. McCORMICK & COMPANY
v.
SOUTHERN PACIFIC COMPANY ET AL.

Submitted March 11, 1915. Decided December 20, 1915.

The existing relation of rates on lumber and timber from San Pedro, Cal., to points in the state of Arizona indicates an apparent unlawful discrimination, but as the present record is inadequate for a determination of the questions involved, the case will be further heard.

E. E. Crandall for complainant.

F. A. Jones, A. W. Cole, and W. P. Geary for Arizona Corporation Commission, intervener.

W. F. Dermont and Frank Lyon for Arizona Lumber & Timber Company, Greenlaw Lumber Company, Flagstaff Lumber Manufacturing Company, and Saginaw & Manistee Lumber Company, interveners.

T. J. Norton, E. W. Camp, F. H. Wood, Hawkins & Franklin, F. B. Austin, and C. W. Durbrow for defendants.

PRELIMINARY REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

The complainant, a corporation engaged in buying and selling timber and lumber at San Pedro and Los Angeles, Cal., filed a complaint herein July 13, 1914, in which it alleges that carload rates charged by defendants for the transportation of timber and lumber from San Pedro to points in the state of Arizona are unduly discriminatory as compared with rates contemporaneously maintained by them from Cliffs, Williams, and Flagstaff, Ariz., to the same points of destination.

Lumber manufacturers with plants located at Cliffs, Williams, and Flagstaff and the Arizona Corporation Commission filed interventions in denial of the allegations of the complaint. The answers are: A statement by the Atchison, Topeka & Santa Fe Railway Company that the rates applicable to complainant's shipments are already too low and should not be reduced; a denial by the El Paso & Southwestern Company, qualified by the allegation that when rates were proposed to be reduced from Cliffs, Williams, and Flagstaff, it contended

before the Arizona Corporation Commission that such reduction "would interfere with interstate commerce and effect a discrimination against such interstate commerce"; and an admission by the Southern Pacific Company and Arizona Eastern Railroad Company that the rates from the Arizona points named "operate as a discrimination against complainant." The Ray & Gila Valley Railroad Company, which is a branch road a few miles in length, filed no answer.

The specific points to which complainant ships are Bisbee, Globe, and Ray Junction, in the mining section of Arizona, which points consume large quantities of timber. Timber is lumber rough sawed, sizes 2 by 6 inches and larger, and in Arizona and from San Pedro to Arizona points rates thereon are lower than on lumber. To those points the annual shipments of timber by complainant amount to from fifty to sixty million feet. The manufacturing plants at Cliffs, Williams, and Flagstaff compete in these mining towns with complainant for the sale of timber. The Southern Pacific is more directly interested in San Pedro, the Santa Fe in Williams, and the El Paso Southwestern brings lumber from Texas into these mining markets, although each of these defendants serves directly or by making joint rates with other defendants all the consuming markets here involved.

The interveners contest the good faith of the complaint and insist that it was filed for the benefit of the defendants and for the purpose of obtaining an increase in the intrastate rates in Arizona. We do not find that this contention is supported by the record, and under section 13 of the act it is the duty of this Commission to consider and determine complaints upon their merits, whether or not the complainant is directly interested therein. Complainant prior to the reduction of the intrastate rates presently to be described had contracts for the delivery of timber to mines in Arizona. The preexistence of these contracts saved complainant from damage up to the time of the hearing in this case, and interveners advance this as a reason for denying relief to complainant. The existence of contracts furnishes no reason for denying to complainant reasonable and nondiscriminatory rates.

In *Saginaw & Manistee Lumber Co. v. A., T. & S. F. Ry. Co.*, 19 I. C. C., 119, this Commission, Arizona then being a territory, prescribed maximum rates on lumber from Cliffs, Williams, and Flagstaff to points in Arizona, including Bisbee, Globe, and Ray Junction. Since the decision in that case, Arizona having become a state, the Arizona Corporation Commission, by order of June 9, 1914, reduced these rates to various points within that state. Williams may be taken as fairly representative of the producing points in Arizona, and the rates therefrom and from San Pedro to Bisbee, Globe,

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and Ray Junction sufficiently indicate the conditions complained of. The volume of the lumber traffic from San Pedro to the mining section of Arizona is greater than from the lumber-producing section of Arizona to the same points, and the transportation conditions, other than distance, appear to be more favorable from San Pedro than from Williams. There has been a decrease in the traffic from both San Pedro and Williams since the date of the order of the Arizona commission above referred to, the decrease from San Pedro being the greater. The rates prescribed from Williams by this Commission in the *Saginaw & Manistee Lumber Co. case, supra*, were made with relation to the rates from San Pedro, both of these rates being then within our jurisdiction. In that case we said, at page 126:

We have established a reasonable rate from Williams, and we can not assume that the Southern Pacific Company will so reduce its rates from San Pedro as to willfully defeat what has been found just.

Since this decision the Southern Pacific, giving as a reason the necessity of meeting the competition of the El Paso Southwestern, has joined with the Santa Fe in voluntarily reducing the timber rates to Globe from Williams and has also reduced its rates from San Pedro, the former by 5 cents and the latter by 6 cents per 100 pounds. Each of the defendants joins in the rates herein complained of, although to some points the haul is over one line, and only the Southern Pacific reaches San Pedro and only the Santa Fe reaches Williams. Below will be found a table illustrative of the rate history and relationship.

Rates from San Pedro and from Williams to stations named:

- 23
- (1) Rates in effect in June, 1910, from San Pedro and rates fixed in 1911 C. C., 119, from Williams.
 - (2) Rates now in effect.
 - (3) Revenue per ton-mile in mills at present rates.

From the foregoing it may be shown that the average of the distances is, from San Pedro, 638 miles, and from Williams, 441 miles; the averages of the revenues yielded are, from San Pedro, on lumber, 13.7, and on timber, 8.2 mills; from Williams, on lumber, 12.6, and on timber, 7.2 mills. On timber, the rates on which are principally ob-

hams by 44 per cent pays a rate which yields a revenue per ton-mile exceeding the revenue yielded by the Williams rate 13 per cent. The principle that the greater the distance via the same line or route the less the revenue per ton-mile is one of general although not of universal application.

Complainant neither alleges nor attempts to prove that the interstate rates from San Pedro are unreasonable. All it asks is that the rates be made relatively fair, either by reducing the interstate rates or by increasing the intrastate rates.

In its report and order prescribing the intrastate rates alleged to be discriminatory, the Arizona Corporation Commission found as a fact that the chief competition of the Arizona mills was from San Pedro, and that the intrastate rates were made with relation to that competition. After a consideration of the competitive situation, and comparing shipments interstate and intrastate, that commission said:

In establishing rates on lumber and timber which we deem reasonable as compared with the San Pedro rates, we announce that if the carriers further disturb this relationship by a reduction in the San Pedro rates, it is to be reasonably expected that this commission will make a similar adjustment of the rates from northern Arizona.

While the record in this case indicates an apparent unlawful discrimination against complainant, no sufficient facts are shown from which we may determine what rates or relationship of rates should be prescribed for the future. The witness to the relative transportation conditions spoke in part without first-hand knowledge; none of the parties offered any suggestions as to what basis of rates should be adopted; and neither in the existing interstate or intrastate rates is there any uniformity in the consideration given the factors of distance and of more than one-line hauls. Under these circumstances we enter no order at this time but will assign the case for further hearing on the question of what rates or relationship of rates should be prescribed. The parties to this proceeding, including the interveners, will be expected to present all facts relevant to the questions involved, and necessary to their proper determination.

W. I. C. C.

No. 8114.
AMERICAN CREOSOTE WORKS, INCORPORATED,
v.
**MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAM-
SHIP COMPANY ET AL.**

Submitted September 20, 1915. Decided December 24, 1915.

Charges for transportation of lumber from points in Texas, creosoted in transit at New Orleans, La., for export, found unreasonable and unjustly discriminatory. Reparation awarded.

J. M. Van Derveer for complainant.

C. W. Owen for Morgan's Louisiana & Texas Railroad & Steamship Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Complainant is a corporation engaged in creosoting lumber at New Orleans, La. By complaint, filed June 25, 1915, it alleges that the rate of 12.5 cents per 100 pounds charged by defendants for the transportation of 25 carloads of lumber from Beaumont and Orange, Tex., creosoted at New Orleans, La., and exported to Central America, was unreasonable and unjustly discriminatory to the extent that it exceeded an export rate of 7 cents per 100 pounds, plus \$5 per car for creosoting in transit. Reparation is asked.

The shipments moved between December 17, 1913, and June 20, 1914, over the Texas & New Orleans Railroad from points of origin to the Sabine River, thence over the Louisiana Western Railroad and the line of the Morgan's Louisiana & Texas Railroad & Steamship Company, hereinafter called the Morgan line, consigned to complainant at New Orleans. Complainant's plant, at which the shipments were creosoted, is within the port limits of New Orleans and on the tracks of the Morgan line. Freight charges were collected in the sum of \$1,766.84.

This complaint is based primarily on the facts that at the time of movement of said shipments there was in force from points on the Morgan line and on the Louisiana Western Railroad an export rate of 7 cents per 100 pounds under which creosoting within the port limits of New Orleans was permitted at an additional charge of \$3 per car, and that subsequently the creosoting arrangement was extended to apply to shipments originating at points on the Texas &

New Orleans Railroad. The Texas & New Orleans Railroad tariff in force when the shipments herein referred to moved contained the rate of 12.5 cents that was applied on these shipments and also an export rate of 7 cents from and to the points involved, which, however, did not provide for the creosoting at New Orleans. It appears, therefore, that the 12.5-cent rate was properly applied. Effective March 1, 1915, provision was made for the application of through rates, plus a charge of \$5 per car for creosoting in transit, on lumber shipped to plants located on the Morgan line within the port limits of New Orleans, when originating at points on the Texas & New Orleans Railroad.

From an examination of the tariffs on file it appears that no provision for creosoting in transit was in effect from May 3, 1914, to November 4, 1914, on shipments of lumber originating at points on the Louisiana Western Railroad and the Morgan line. No explanation appears of record for the absence of such provision during this period.

On February 25, 1915, defendants filed an application on the special docket seeking authority to make reparation to complainant on the basis of the export rate of 7 cents, plus \$5 per car. It was admitted at the hearing that the rate applied was unreasonable and unjustly discriminatory.

Upon the whole record we are of the opinion and find that the rate charged on the shipments in question was unreasonable and unjustly discriminatory to the extent that it exceeded 7 cents per 100 pounds, plus a charge of \$5 per car for creosoting in transit at New Orleans. We further find that complainant made the shipments in accordance with the foregoing statement of facts and paid and bore charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the amount that it did pay and the amount that it would have paid at the rate herein found reasonable; and that it is therefore entitled to an award of reparation in the sum of \$652.44, with interest from September 23, 1914. As creosoting in transit is now authorized by the tariff, no order for the future will be entered.

87 L. C. C.

No. 7791.
PITT GAS COAL COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted November 29, 1915. Decided December 22, 1915.

Present rate on coal from Besco, Pa., to Ashtabula Harbor, Ohio, and other lake ports in the state of Ohio, when for transshipment by vessels on the great lakes to points beyond, found to be unreasonable to the extent that it exceeds 78 cents per net ton. The southern boundary of the Pittsburgh district is changed to include Besco.

C. G. McIlvain and W. R. Murphy for complainant.
A. P. Burgwin and W. W. Collin, jr., for defendants.

REPORT OF THE COMMISSION.

MEYER, *Commissioner*:

Complainant, a corporation, is the owner of a coal mine located at Besco, Washington county, Pa., on a branch of the Pennsylvania Railroad, one of the defendants herein. By petition, filed March 2, 1915, complainant alleges that the present lake cargo coal rate of 90 cents per ton from Besco, Pa., to Ashtabula Harbor, Ohio, and other lake ports in the state of Ohio, maintained by the Pennsylvania Railroad Company and its connections, is unjust, unreasonable, and unjustly discriminatory in so far as it exceeds the lake cargo rate from Pittsburgh district of 78 cents per ton.

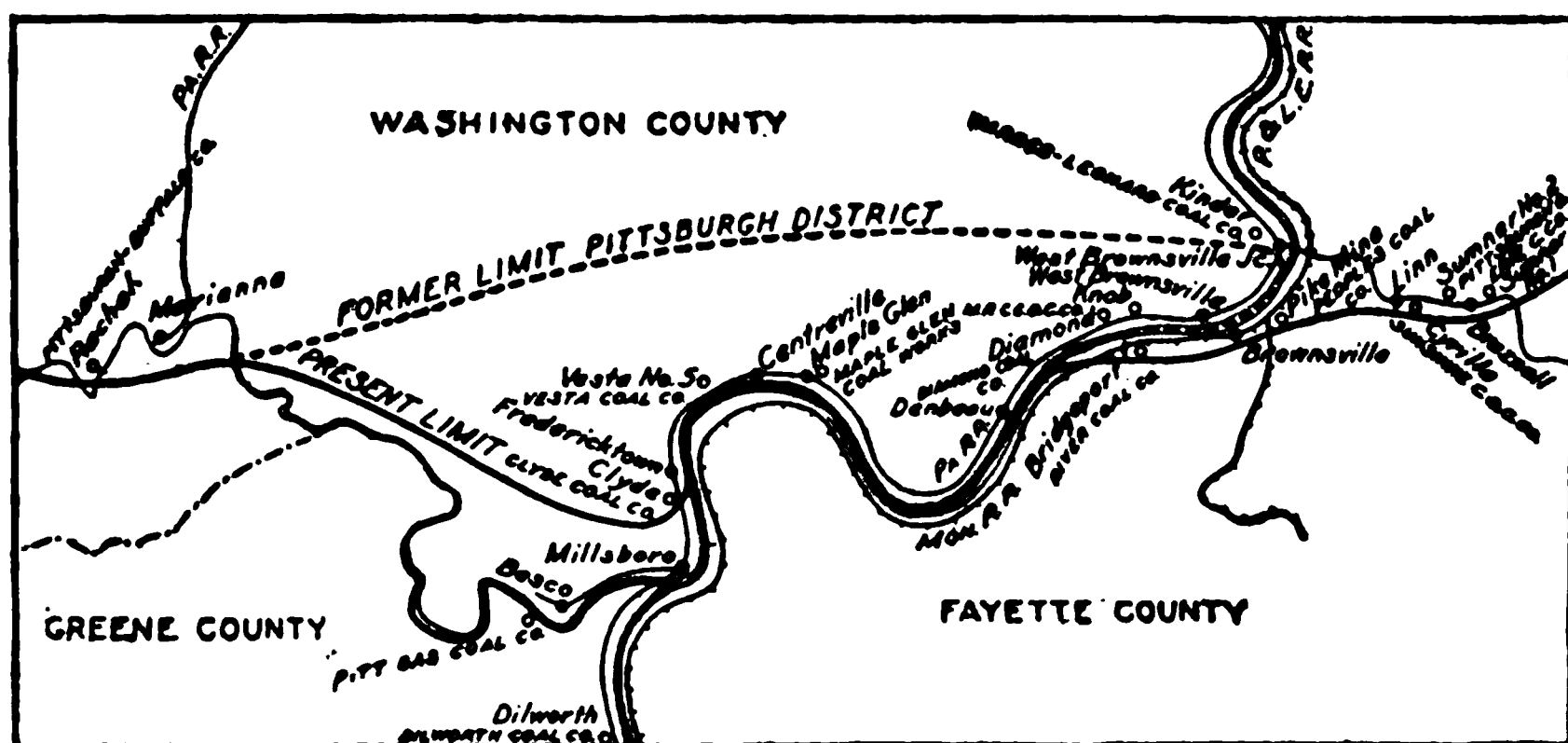
By order of the Commission in *Clyde Coal Co. v. P. R. R. Co.*, 23 I. C. C., 135, the Pittsburgh district was extended to include the Clyde mine, located within 2.4 miles of complainant's mine. The map on the following page shows the present boundary of the Pittsburgh district and the location of complainant's mine with respect thereto.

It will be observed that Besco is a station on a short branch of the Monongahela division of the Pennsylvania Railroad. Complainant's property is located on both sides of Ten Mile Creek, the greater part of its present holdings being south of the creek, where also the pit mouth is located. Complainant takes its coal a distance of from 500 to 600 feet from the mouth of the mine, across the creek to the north side, where its tipple is located and where the coal is delivered to the railroad. The coal at complainant's mine is practically of the same grade and adapted to the same uses as the coal at the Clyde mine and other near-by mines in the Pittsburgh district.

The present rate of 90 cents per ton is the same as the lake cargo rate from the Fairmont district, from which the average distance to ports on Lake Erie is 248 miles. The average distance from all

mines in the Pittsburgh district to Ashtabula Harbor, the nearest lake port, is 148 miles, and to all of the lake ports, 160 miles. From the Clyde mine the distance is 188.8 miles, this mine being the farthest distant from Ashtabula Harbor of any of the mines included in the Pittsburgh district as at present defined. From Besco the distance is 191.2 miles.

The Commission's opinion in the *Clyde case* calls attention to the fact that the haul from the Clyde mine to Pittsburgh is down grade, and that the mine is only 8.9 miles from West Brownsville, one of the assembling points for lake cargo coal in the Pittsburgh district. The haul from Besco to the Clyde mine is also down grade, and it was testified in the present case that from some of the other mines located at the outskirts of the Pittsburgh district, for



example, the Marianna and Latrobe mines, the haul is at times against the grade, entailing greater operating expenses than from Besco.

Upon the hearing it was admitted by the attorney for defendants that the cost of operation from Besco was practically the same as from the Clyde mine. It is claimed that the cost of operation is not necessarily an element in the issue here presented. Defendants oppose complainant's request to be included in the Pittsburgh district on the same ground that they opposed the request of the Clyde mine, namely, that an extension of the Pittsburgh district beyond its present borders would likely lead to extensions to other mines. The Dilworth and Crucible mines are located on the Monongahela division south of Ten Mile Creek, and the distance from these mines exceeds the distance from Besco to Ashtabula Harbor by only 1 and 3.9 miles, respectively. It was testified that the railroad company intends to extend its Monongahela division approximately 11 miles to connect with the Monongahela Railroad at Martin, Pa. It is feared that an extension of the Pittsburgh district to include com-

plainant's mine would lead to a request for an extension to the Dilworth and Crucible mines and to other properties that might be opened up on the proposed extension of the Monongahela division. Defendants also fear that it would naturally lead to requests for an extension of the Pittsburgh district to include mines in the Connellsville district located east of the Monongahela River, from which the lake cargo rate is 90 cents, the same as the present rate from Besco and from the Fairmont district.

Ten Mile Creek forms the boundary between Washington and Green counties. While complainant claimed that Ten Mile Creek might well serve as a boundary for the Pittsburgh district, defendants claim that it is an insignificant stream, not important enough to be recognized as a natural boundary. However, based evidently upon the supposition that it might be accepted as a natural boundary line for the Pittsburgh district, defendants lay great stress upon the fact that complainant's mine opening is located on the south side of the stream, and consequently outside of the district should Ten Mile Creek be accepted as the boundary. Defendants argue that the fact that the tipple where coal is delivered to the carrier is located north of the stream would not justify the application of the Pittsburgh district rate in the event that the boundary is extended as above indicated. It is claimed that the application of the Pittsburgh district rate would defeat the rate which should properly apply on coal mined outside of the Pittsburgh district.

It is our opinion that the place where coal is delivered by the mine to the railroad should determine the rate which is to be applied.

The following language, used by the Commission in the *Clyde case, supra*, shows the considerations which led to the requirement that the Clyde mine be included within the Pittsburgh district, and we believe that essentially similar considerations demand the extension of the Pittsburgh district boundary to include all territory lying north of Ten Mile Creek.

• • • the Pittsburgh district along its south and southeast boundary includes all mines within a radius of 30 miles from Pittsburgh proper, except the Maple Glen, while within the 35-mile limit it takes in the Latrobe, Sumner or Braznell, Pike, and River Coal Company mines, but misses the Clyde. The boundary line, after bringing in the mines within the 35-mile radius, dips sharply inside the 30-mile radius toward the center of the district, excludes the Maple Glen and Clyde, which are only 2.1 miles apart, and then resumes its normal curve outside that radius at the Marlanna mine.

• • • In forming the Pittsburgh district, the carriers have followed no hard and fast rule, they have taken in mines more distant from Pittsburgh than the Clyde, and the contour of the district has been materially changed so as to include certain mines and exclude others. All grouping for rate purposes is necessarily more or less arbitrary. Group lines generally have the appearance of injustice to some point just across the line. Yet the line must be drawn

somewhere or the grouping abandoned. Once established, groups should not be lightly or unnecessarily disturbed. However, that part of the boundary line of the Pittsburgh group here in issue suggests an unusual arbitrariness or grotesqueness for which the mind instinctively seeks an explanation and justification which nothing in the present record seems to furnish.

We do not think the defendants have justified the eccentric movement of the Pittsburgh district boundary line where it side-steps complainant's shipping point. We believe that the location of the Clyde mine west of the Monongahela River, north of Ten Mile Creek and very close to the 30-mile radius from Pittsburgh, its accessibility to one of defendants' assembling points for lake cargo coal, and the other facts before noted, all combine to show that it properly belongs within the Pittsburgh district, and is entitled to the rate of 78 cents ordered by the Commission to become effective from such district.

We are of the opinion that, in so far as it is here in issue, the boundary line of the Pittsburgh district should be fixed at Ten Mile Creek, and that defendants' rate on coal from Besco, Pa., to Ashtabula Harbor, Ohio, and other lake ports in the state of Ohio, when for transshipment by vessel on the great lakes to points beyond is unreasonable to the extent that it exceeds 78 cents per net ton, which rate the defendants will be required to maintain for the future.

An order in accordance herewith will be issued.

87 I. C. C.

No. 7682.

BLACK & WHITE RIVER TRANSPORTATION COMPANY
v.
MISSOURI PACIFIC RAILWAY COMPANY ET AL

Submitted November 15, 1915. Decided December 20, 1915.

The increased through charges resulting from the cancellation by the defendant rail carriers, in May, 1912, of joint rates in connection with the complainant on lumber and other forest products taking the same rates from landings on the Black and White rivers, in Arkansas, to interstate destinations on the defendants' lines, not found justified, and the reestablishment of joint rates required.

I. J. Mack for complainant.

F. L. Inman for Inman Packet Company, intervener.

W. F. Dickinson, W. T. Hughes, Thomas Bond, H. G. Herbel, F. G. Wright, and *Carl Giessow* for defendants.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

By petition, filed January 18, 1915, the complainant asks that the defendants be required to reestablish in connection with the complainant the joint rates formerly in effect on lumber and other forest products taking the same rates from landings on the Black and White rivers, in Arkansas, to interstate destinations on the lines of the defendants, it being alleged that the combination rates at present applicable to this traffic are unreasonable and unjustly discriminatory. Reparation is asked.

The Black & White River Transportation Company owns one steamboat and two barges, which it operates from Newport, Ark., as far north on the Black River as Black Rock, Ark., about 110 miles, and as far south on the White River as Augusta, Ark., more than 60 miles. It delivers freight to the St. Louis, Iron Mountain & Southern Railway at Newport; to the Chicago, Rock Island & Pacific Railway at Jacksonport, Ark.; and to the St. Louis & San Francisco Railroad at Black Rock. The landings reached by complainant's boats are located in a heavily timbered region, in which only a small portion of the available timber has been cut and from which there is no substantial traffic other than in forest products. A large part of the Black River territory reached by complainant is not served by any railroad.

On May 1, 1912, the defendants canceled the joint lumber rates in effect via the boats of the complainant from Black and White river landings to points on their lines, since which date the basis has been full combination on one of the three junctions named. The complainant's local rate on lumber from the river landings to Newport and the other junctions is 6 cents per 100 pounds, and the former joint rates were 4 cents higher than the rates from the junctions. For example, the rail rate from Newport to St. Louis, Mo., was, and still is, 14 cents, and the former joint rate from the landings 18 cents. Out of the former through rates the complainant received its full local rate and the defendants 2 cents less than their rates from the junctions. In the tariffs which canceled the joint rates there is a notation to the effect that the cancellation is in compliance with our opinion in *The Tap Line Case*, 23 I. C. C., 277, decided April 23, 1912.

The Black & White River Transportation Company is a bona fide common carrier and is not owned by or affiliated with any lumber interest. It was incorporated in July, 1909, with an authorized capital stock of \$20,000, of which \$8,000 has been subscribed. Of the 320 shares of stock outstanding, 300 were exchanged for a steamboat, which, together with the two barges, is not worth more than \$9,000 at a liberal estimate. The complainant's bank balance on June 1, 1915, was \$19.84; for the year 1914 its gross revenue was \$11,322.08, and its total expenses \$11,281.90; and during the year ended May 31, 1915, it delivered to its three connections 193 carloads of lumber, on which the latter earned revenue of \$21,760.01 and on which it earned \$5,869.68. A comparatively small amount of miscellaneous freight, such as hardware, groceries, and clothing, is transported by it from Newport to the various landings. The complainant has offered to give bond in any sum which in our opinion may be necessary for the defendants' protection in connection with shipments under any joint rates that may be required by us.

The interstate lumber tonnage handled by the complainant during the three years following the withdrawal of the joint rates was approximately 25 per cent of the tonnage handled during the three years immediately preceding, when joint rates were in effect. Of the 30 sawmills on the Black River between Jacksonport and Black Rock only 3 or 4 are in operation, and whereas 8 steamboats formerly operated on the two rivers, only 3 are now plying, and they are idle part of the time. In this connection it should be stated that in May, 1912, the defendants also canceled joint rates in connection with the Inman Packet Company, which serves the same landings as complainant and which has intervened herein in support of the complaint. There has been an unprecedented depression in the lumber business in this territory during the past few years, and defendants contend that

the decrease in complainant's through tonnage is thus explained, but complainant attributes it primarily to the increase in the through charges. Lumbermen operating on the rivers testified unanimously that under the present rates it is impossible to market at a profit the lower grades of lumber.

That part of the White River served by the complainant is paralleled by the main line of the St. Louis, Iron Mountain & Southern Railway. The rates on lumber to St. Louis are 20 cents from the river landings and 14 cents from the opposite railroad stations. This has resulted, it was testified, in the removal of a number of mills from the river to the railroad.

The complainant does not operate its boats on a time schedule or, when the traffic is light, regularly. Several days are required to make a round trip between Newport and either Black Rock or Augusta, and the testimony of shippers is that the service is as regular and as satisfactory as is demanded by the character of the country served and of the traffic handled. There is no evidence that the operation of complainant's boats was unsatisfactory to the defendants prior to the cancellation of joint rates or that it caused the cancellation.

The defendants introduced no testimony, but participated in the hearing and argument and filed a brief. They contend that the burden of justifying the increased through charges resulting from the cancellation of the joint rates is not upon them, but the facts do not sustain their contention, as it is not disputed that they, and not the complainant, were responsible for the cancellation.

We have found that the complainant is a bona fide common carrier and is not associated with or controlled by any lumber interest. Consequently the decision referred to in *The Tap Line Case* did not require the cancellation of joint rates on lumber and other forest products.

The defendants question the financial responsibility of the complainant and contend that it would be unjust to require them to enter into joint arrangements with a boat line whose service is so uncertain. Their main contention, however, goes to the question of the constitutionality of the provisions of the act to regulate commerce authorizing the Commission to establish through routes and joint rates and of the Carmack amendment to section 20 of the act. Illustrating defendants' contention, we quote from their brief as follows:

If an investor in railroad securities could be compelled to take the hazards of water transportation on these treacherous streams there would be little market for railroad stocks and bonds. The idea of compelling a railroad company to assume the liability which it would necessarily incur by virtue of the Carmack amendment to the act to regulate commerce, which renders the initial carrier liable for the negligence of its connections, is so opposed to fundamental

principles of property rights that we can not conceive of any theory on which this Commission, or the courts, could sustain the act of Congress authorizing this Commission to establish joint through routes and rates with water carriers where the rail carriers objected to so doing. The property guarantee of the constitution of the United States would be of little value if it could be frittered away by Congress in such a way as this.

In *Atlantic Coast Line v. Riverside Mills*, 219 U. S., 186, the Supreme Court of the United States upheld the validity of the Carmack amendment, and in that decision used the following language:

But it is said that the act violates the fifth amendment by taking the property of the initial carrier to pay the debt of an independent connecting carrier whose negligence may have been the sole cause of the loss. But this contention results from a surface reading of the act and misses the true basis upon which it rests. The liability of the receiving carrier which results in such a case is that of a principal for the negligence of his own agents.

In substance, Congress has said to such carriers, "If you receive articles for transportation from a point in one state to a place in another, beyond your own terminal, you must do so under a contract to transport to the place designated. If you are obliged to use the services of independent carriers in the continuance of the transit, you must use them as your own agents and not as agents of the shipper." It is, therefore, not the case of making one pay the debt of another. The receiving carrier is, as principal, liable not only for its own negligence, but for that of any agency it may use, although, as between themselves, the company actually causing the loss may be primarily liable.

In the same opinion the following language is used:

But, it is said, that any security resulting from a voluntary agreement constituting a through route and rate is destroyed if the receiving carrier is not at liberty to select his own agencies for a continuance of the transportation beyond his own line. * * * This record presents no question as to the right of the initial carrier to refuse a shipment designated for a point beyond its own line, nor its right to refuse to make a through route or joint rate when such route and rate would involve the continuance of a transportation over independent lines. We, therefore, refrain from any consideration of the large question thus suggested. * * *

The fifth amendment is likewise invoked in this case, emphasis being laid on the voluntary nature of the agency in the *Atlantic Coast Line case, supra*, and it being contended that the provisions of the act authorizing this Commission to compel a carrier to become the initial line in a route and to accept liability under the Carmack amendment for the negligence of a connecting carrier agent not selected by it, and possibly not acceptable to it, violates the said amendment. It is not questioned by the defendants that a carrier may in its discretion accept interstate transportation for points beyond its own terminal, with the attendant liability for the negligence of its connection, but only that its discretion in accepting or refusing to accept such traffic and such liability may not constitutionally be reviewed. Even if it were within the province of this Commission to question the constitutionality of the acts of Congress by

which duties and powers are imposed or conferred upon it, we could not regard the defendants' contention as sound, for if upheld it would make a substantial and important feature of the regulation of interstate commerce finally dependent upon the decision of the management of a carrier, whether upon whim or otherwise, in accepting or refusing to accept certain interstate traffic. The establishment of a through route, like the fixing of a maximum rate for the future, is not a judicial act, but administrative or ministerial in furtherance of the function exercised by Congress, and it seems self-evident that if Congress may lawfully place upon the receiving carrier primary liability to the shipper for the negligence of a connecting carrier it likewise has power to establish through routes for the movement of interstate commerce and to place the same liability upon the receiving carrier. Congress has not authorized the arbitrary establishment of through routes without investigation into the status and responsibility of the carriers and a due regard to the just rights of each of them as well as those of the shipping public, which must not be lost sight of, but has prescribed the same machinery as for the fixing of a rate for the future, which was held in *I. C. C. v. C., N. O. & T. P. Ry. Co.*, 167 U. S., 479, to be a legislative function.

In the opinion of the Supreme Court in the *Atlantic Coast Line case, supra*, it was said:

If it is to be assumed that the ultimate power exerted by Congress is that of compelling cooperation by connecting lines of independent carriers for purposes of interstate transportation, the power is still not beyond the regulating power of Congress, since without merging identity of separate lines or operation it stops with the requirement of oneness of charge, continuity of transportation and primary liability of the receiving carrier to the shipper, with the right of reimbursement from the guilty agency in the route. That there is some chance that this right of recoupment may not be always effective may be conceded without invalidating the regulation. If the power existed and the regulation is adapted to the purpose in view, the public advantage justifies the discretion exercised and upholds the legislation as within the limit of the grant conferred upon Congress. * * *

This seems likewise applicable in the case of a route established by the Commission. In the Panama Canal act of 1912, which was passed subsequent to the decision above referred to, and in which the powers of the Commission with reference to the establishment of joint arrangements between rail and water carriers were reaffirmed and enlarged, Congress has further safeguarded the rights of the interested carriers by providing that our orders requiring such joint arrangements—

* * * may be conditioned for the payment of any sum or the giving of security for the payment of any sum or the discharge of any obligation which may be required by the terms of said order.

To sustain the defendants' contention would leave a wide open door for arbitrary discriminations as between connecting lines to the detriment of the shipping public. The defendants, however, are not here seeking to avoid liability as initial carriers under the Carmack amendment, for such liability could not attach by reason of any through joint rates and routes we could require within the scope of the complaint, as the complaining water carrier necessarily would receive and issue billing for all of the shipments that could move under the joint rates which we are asked to reestablish.

As above stated, the burden of justifying the increased rates is upon the defendants, and they have not sustained it. Therefore, the defendants, according as their routes may run, will be required, by appropriate order, to reestablish in connection with the complainant joint rates on lumber and other forest products taking the same rates to interstate destinations on their lines from landings on the Black and White rivers which shall not exceed by more than 4 cents per 100 pounds the rates contemporaneously maintained to the same destinations from Newport, Jacksonport, or Black Rock, respectively. The defendants have practicable methods of insuring the payment of their proportion of freight charges, and we are not of opinion that the furnishing of a bond by the complainant is necessary.

Counsel for the complainant stated at the hearing that the prayer for reparation was made with the idea that if the former joint rates were reestablished the shippers could make proof as to their claims. The shippers are not parties to this proceeding, and therefore they have no claims properly before us.

An order in accordance with the above conclusions will be entered.

37 I. C. C.

No. 7556.

EAGLE ICE COMPANY ET AL.

v.

**CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.**

Submitted May 19, 1915. Decided December 24, 1915.

Increased carload rate of 3.5 cents per 100 pounds on ice when moving in ordinary box cars from certain points in Wisconsin to Chicago, Ill., not justified. Reasonable rates for the future prescribed and reparation awarded.

M. F. Gallagher and E. B. Wilkinson for complainants.

R. H. Widdicombe and C. C. Wright for Chicago & North Western Railway Company.

O. W. Dynes for Chicago, Milwaukee & St. Paul Railway Company.

A. H. Lossow for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

The pleadings in this case put in issue the rate of 3.5 cents per 100 pounds on ice in carloads from points in southern Wisconsin on the lines of defendants to Chicago, Ill., and the suitable character of the equipment furnished by defendants for this service. The rate which was increased from 3 cents in November, 1914, is attacked as being unreasonable *per se* to the extent that it exceeds 2.5 cents per 100 pounds, and the equipment is asserted to be inferior and unsuitable for ice traffic. The Commission is asked to fix a just and reasonable rate for the future, to award reparation on all shipments which have moved since December 7, 1912, and to require defendants to furnish suitable cars for the traffic.

The complainants, 10 in number, are engaged in harvesting natural ice from numerous small lakes near the following towns, which are representative: Burlington, Camp Lake, and Silver Lake, on the Minneapolis, St. Paul & Sault Ste. Marie Railway, hereinafter called the Soo line; Salem, Fox River, Twin Lakes, Lake Como, and Williams Bay, on the Chicago & North Western Railway; and Kansasville and Burlington on the Chicago, Milwaukee & St. Paul Railway. Their total investment in ice houses and other equipment at the points of origin is estimated at \$2,000,000, and the total movement from Wisconsin to Chicago at 500,000 tons annually. Of this amount,

about 50 per cent moves during a period of 100 days in midsummer and about 75 per cent between May 1 and November 1. The average cost of the ice, including harvesting, storing, and loading into cars, is variously estimated as between 68 and 75 cents per ton. By far the larger part of the ice is sold f. o. b. points of origin and the remainder is shipped to Chicago and sold to smaller dealers and from wagons to the retail trade. The selling price of that sold f. o. b. the points of origin is said to average about 85 cents per ton and that of the remainder from \$1.40 to \$3.50 per ton. It is therefore contended by complainants that the increase from 3 cents to 3.5 cents per 100 pounds in the freight rate largely eliminates their profit, as it is impossible to pass along the increase to the consumer on account of the competition of other natural ice.

The chief competition of complainants in the Chicago market comes from other natural ice produced at near-by points in Illinois and Indiana. There are many points in northern Illinois which were formerly grouped at the same rate with the Wisconsin points involved herein. The carriers attempted to increase the rate from these Illinois points to Chicago to 3.5 cents per 100 pounds, but the tariff of the Chicago, Milwaukee & St. Paul Railway was disapproved by the Illinois commission. Natural ice to the extent of 835,000 tons annually is shipped to Chicago from numerous points west, south, and east thereof on rates ranging from \$5 per car to 63 cents per ton. How much comes from beyond the radius of the 63-cent rate does not appear, but it may be fairly inferred from the record that the sources referred to furnish most of Chicago's supply of natural ice.

The natural ice competes to some extent with artificial ice manufactured in Chicago. The extent of this competition does not clearly appear, but, as most of the natural ice is used for refrigeration purposes, and consequently is sold to large buyers, and the artificial ice is principally used for home consumption and therefore sold at retail, it can not be very great. In this connection it may be added that a large percentage of the 800,000 tons of artificial ice manufactured in Chicago annually is produced by complainants themselves.

The points from which the ice is billed are located on the main and branch lines of defendants, and, although the evidence is conflicting, the average distance from the points which take the 3.5-cent rate to Chicago may be taken as approximately 75 miles. Each ice house has a spur track running from the loading platform to the railroad. These spur tracks range in length from a few hundred feet to 3 miles, and are maintained by defendants.

The Chicago & North Western and the Soo line handle the business in the following manner: A train of empty cars is taken from Chi-

Chicago for ice loading, and upon arrival at the various shipping points the cars are switched upon the tracks leading to the ice houses and spotted at the loading points. After delivering the empty cars the engine starts back picking up the loads, which are pulled to the main line, where a special train is made up for Chicago. The Chicago, Milwaukee & St. Paul handles the empty and loaded cars in its regular trains with other freight.

Defendants claim that they furnish an expedited service. So far as the Chicago & North Western and the Soo line are concerned, this is true from the points where the special trains are made up to their Chicago yards, but the record indicates that considerable delay occurs between the ice houses and the points where the special trains are made up, and also between the Chicago yards and the final delivery points. One of the chief difficulties of the business from an operating standpoint is that during the busy season the carriers must hold themselves ready to move the maximum daily loading. As the loading is determined to some extent by weather conditions, it may be, and frequently is, heavy one day and light the next. During this period, however, the Chicago & North Western and the Soo line average between 25 and 50 cars for their special trains and the Chicago, Milwaukee & St. Paul about 80 cars for its regular trains in which ice is transported.

The average loading of the cars is between 28 and 30 tons. While the loss by shrinkage appears to be great, especially when the ice is loaded in common box cars, no claims are paid by the carriers. Using 30 tons as the average load, and the average distance, the ton-mile and car-mile earnings under the present rate are 0.9 and 28 cents, respectively. Under the 3-cent rate they were 0.8 and 24 cents, respectively. In this connection it should be stated that most all of the cars move back empty from Chicago to the originating points.

There has been no change in the above-described transportation conditions in recent years except a steady increase in the volume of the traffic. Up to about 1890 the rate from the points in question to Chicago was 2.5 cents, from which it was increased to 3 cents. The increase from 3 to 3.5 cents having been made in November, 1914, the burden of proof is upon defendants to justify the reasonableness of the latter rate. In assuming this burden they contend that the rate of 3.5 cents is justified (1) by the cost of the service, (2) by increased switching absorptions in Chicago, and (3) by comparison with other rates for substantially similar hauls. These contentions will be discussed in the order named.

(1) Two widely different sets of cost figures were presented, one by the Soo line and the other by the Chicago, Milwaukee & St. Paul.

As stated, the Soo line handles the ice in special trains. Its haul to Chicago is a main-line haul. The crews and engines employed in this service are engaged in handling no other traffic. During the year 1914 the operating cost of these special trains, including the cost of necessary switching, but no absorptions, in Chicago was \$3.25 per car. No taxes, interest, or other overhead expenses are included in this estimate. It is merely the out of pocket cost of the service.

The Chicago, Milwaukee & St. Paul handles the ice with other freight and, in its cost computations, all cars were treated alike regardless of the commodity loaded or the amount of the loading. The total cost of operating all the trains in which ice cars were carried was computed and so much of that total cost as the number of ice car-miles bore to the total car-miles was charged to the ice traffic. This was the method followed to ascertain the direct expenses, i. e., expenses capable of definite allocation. It was then determined that the indirect expenses of all traffic, i. e., expenses not capable of definite allocation, incurred in the states of Wisconsin and Illinois, through which this traffic moves, amounted to 49.48 per cent of the direct expenses on all traffic incurred in those states. This percentage was then added to the total direct expenses. By this method the line-haul cost was ascertained to be an average of \$7.94 per car.

To ascertain the cost of switching in Chicago, which is assumed to be done as exclusive Illinois business, the method used by this same defendant in *Advances on Coal within the Chicago Switching District*, 27 I. C. C., 71, and in *Switching Charges at Milwaukee, Wis.*, 32 I. C. C., 509, was followed. By this method all the cars were again treated alike, irrespective of the loading. This average cost was ascertained to be \$8.02 per car. To these costs for line-haul and switching service there were added \$1.85 switching absorption, \$2.14 per diem, and 65 cents reclaim, making a total average cost of \$20.60 per car. The average was determined during a period when the 3-cent rate was in effect. The average receipts per car during the same period were \$18.18, so that on the basis of the above average cost this line contends that it sustained a net loss of \$2.42 per car.

It would serve no good purpose to analyze the many formulæ and theories upon which this result is based. Suffice it to say that all it purports to show is the average cost of transporting all commodities, high and low grade, whereas we are here dealing with one of the lowest grade commodities which railroads are called upon to transport. In *Mountain Ice Co. v. D., L. & W. R. R. Co.*, 15 I. C. C., 305, 320, it was said regarding this commodity:

Considering the very small value of this commodity when taken up for transportation in connection with the manner in which it is handled, and the fact that the business can only move at all under low rates, we are impressed

and have already expressed the opinion that these defendants ought to accept for this business rates which are among the lowest made by them in any instance. Other conditions being equal, their rate per ton-mile from this traffic ought not to equal the average from all sources.

In this connection it may be stated that when the witness who presented the exhibits in support of the average cost of \$20.60 per car was asked to reconcile his figures with those submitted by the Soo line, he explained that the expenses for enginemen, trainmen, fuel, and locomotive repairs, the items included in the Soo line's computations, amount to from 30 to 35 per cent of all expenses, including taxes and interest on the property investment. On this basis the total average cost on the Soo line was approximately \$9.75 per car, or only 47 per cent of that on the Chicago, Milwaukee & St. Paul, as computed by this witness. It may be further noted that the cost figures presented by the latter line include cars which moved from a few farther distant points not involved in this case.

(2) The second justification submitted is increased switching absorptions at Chicago. Formerly the rate of 3 cents covered delivery to industries on the rails of the delivering carriers only, switching charges being added to the Chicago rate to cover deliveries to industries on connecting lines. On February 1, 1912, provision was made for absorbing the switching charges of connecting lines to the extent of \$4 per car on traffic destined to industries on the Baltimore & Ohio Chicago Terminal Railroad and of \$3 per car on all other lines in the Chicago district, provided the total freight charges amounted to \$15 or more per car. In April, 1912, the three defendants herein filed tariffs increasing the amounts to be added to the Chicago rate to cover deliveries of ice on connecting lines and the tariff of the Chicago, Milwaukee & St. Paul, being protested, was suspended. These delivery charges were increased for the purpose of taking care of the increased allowances to connecting lines provided for in the so-called Lowrey tariff, which had been made effective in August, 1911. This plan contemplated two changes in the general terminal situation in Chicago: (a) A general revision upward of the connecting line switching charges, and (b) a reciprocal switching arrangement whereby the Chicago rate was made to cover delivery to all industries within the switching limits, provided the line-haul rate was 2.5 cents per 100 pounds or higher and the freight charges \$15 per car or more. The defendants in the instant case, however, originally excepted ice from the application of the reciprocal switching feature of the plan. In the above case it appeared that no increase had been made in the Chicago rate and therefore no increase was effected for deliveries to industries on the lines of the originating carriers. The principal contention of the respondent was that the

earnings on ice were unreasonably low. In the decision, *Investigation and Suspension Docket 94*, 24 I. C. C., 660, 663, we said:

Manifestly if the transportation rates on this commodity to Chicago are too low, and any increase in these rates is justified, it should be made in such manner as would not discriminate against shippers or receivers.

As above stated, the tariffs of the Chicago & North Western and the Soo line, increasing the charges on deliveries to connecting lines, became effective. In *People's Fuel & Supply Co. v. G. T. W. Ry. Co.*, 27 I. C. C., 24, the increased charges from Silver Lake, Wis., on the Soo line, to complainant's plant on the Grand Trunk Western tracks in Chicago, were attacked as being unjust and unreasonable. Excepting ice from the reciprocal switching feature of the Lowrey tariff was also attacked as being unjustly discriminatory. In that case we required the restoration of the former charges on shipments to the complainant's plant on the ground that defendants should not be permitted, under the guise of changed arrangements in respect to their reciprocal switching charges, to pass along increased charges to their patrons.

On various dates in 1913 and 1914 the defendants herein amended their ice tariffs by providing for the full application of the Lowrey tariff. This caused a reduction in their net earnings on ice delivered to connecting line industries, as the connecting line allowances provided for in the Lowrey tariff are greater than the switching charges formerly absorbed on this traffic. This action also had the effect of increasing the connecting line business, and, as the net earnings on ice were considered to be too low, the Chicago rate was accordingly increased to 3.5 cents.

It is apparent from this history of the application of the rate to connecting line industries in Chicago that the increased switching absorptions present no justification for the increased rate to industries on the rails of the defendants herein to which most of the traffic, considering all lines together, is consigned. And as a justification for the increased charges to industries on connecting lines its application is very narrow.

The record does not show these particular amounts but, spreading the total of the absorptions over all the cars handled from the points of origin specified in the complaint and from other points in the same vicinity, the averages per car were as follows for the periods indicated:

Road.	Period.	Average.
Chicago, Milwaukee & St. Paul.....	June, July, August, 1914.....	\$1.85
Chicago & North Western.....	Year ended June 30, 1914.....	1.67
Soo line.....	August, 1914.....	2.01

The Chicago terminals of the Soo line are not so extensive as those of the other two defendants, consequently a larger proportion of its cars go to connecting lines, which accounts for the higher average absorption on that line.

(3) The third justification offered is a comparison with other rates for substantially similar hauls. The rates selected are for hauls in central freight association, eastern trunk line, and western territories, but no testimony tending to show the circumstances and conditions surrounding the particular rates was given. Complainants also presented numerous exhibits comparing the rate involved with rates on other commodities between Milwaukee and Chicago, and on ice from Indiana points to Chicago. No evidence of substantial similarity of conditions was introduced. In *People's Fuel & Supply Co. v. G. T. W. Ry. Co., supra*, some comparisons of the rate from Silver Lake to Chicago with the rates on ice from points in Indiana to Chicago were made. We may, therefore, to some extent, test the reasonableness of the rate in issue by comparisons with rates on ice for substantially similar hauls to Chicago. A number of these rates taken from exhibits presented by both sides in the instant case, are as follows:

Point of origin.	Distance to Chicago.	Rate to Chicago (per ton).
	Miles.	Cents.
Mill Creek, Ind.....	24.5	00
Stillwell, Ind.....	27	00
Parron Lake, Mich..	27.5	00
Michigan City, Ind..	28	00
Plainfield, Ill.....	35	00
Lake Zurich, Ill.....	35	00
Momence, Ill.....	36	00
Yorkville, Ill.....	49	00
Bass Lake, Ind.....	50	00
Laporte, Ind.....	50	00
Westville, Ind.....	55	00
Average.....	65	00

EQUIPMENT FURNISHED.

Complainants estimate the shrinkage in the weight of the ice between the weighing points, which are nearly halfway between the points of origin and Chicago, and destination at 20 per cent. It appears that there is an additional loss due to the ice in the top and bottom tiers in the car becoming rounded. These pieces are known in the trade as "roundheads," and sell at a reduced price. It is contended that for such a perishable commodity insulated or refrigerator cars should be furnished.

Witnesses for complainants testified at length that the cars furnished for ice loading are unfit for such service. It is stated that the roofs are frequently leaky, the doors missing or broken, the floors

and ends broken or indented with holes, and that these and other defects indicate that the defendants relegate their poorest equipment to the ice traffic. It is also stated that a majority of the cars furnished have in them refuse which must be cleaned out before the cars can be loaded. The Soo line cars are said to average better than those of the other two defendants, as this line keeps the same cars in the ice service all the time.

On the other hand, defendants represent that the cars furnished for the ice service are as good as those furnished for any other service. The wear and tear on the cars from ice is greater than that from other commodities, as the slippery character of the ice causes the load to shift back and forth in the car and weakens the framework. The moisture from the ice also attacks the wood of the car, causing general deterioration. For all these reasons more repairs are necessary on cars used in the ice service than on cars in other service.

Complainants point out that special equipment is furnished for the movement of other perishable commodities, none of which is quite so perishable as is ice during warm weather. Defendants do furnish some insulated vegetable and refrigerator cars for this ice service, but during the summer months when such cars are most needed they are assigned to other traffic. Although hay is packed in the tops of the box cars that are loaded with ice, for which the carriers make an allowance of 2,000 pounds in the weight of the load, the shrinkage in insulated cars is only about 50 per cent of that in box cars. The carriers do not pay for the hay nor for the paper used along the tops and sides of the cars, nor for the expense of installing the hay and paper. The hay costs from \$6 to \$9 per ton, and usually from 1,000 to 1,500 pounds are put in each box car.

Notwithstanding the fact that the shrinkage in insulated or refrigerator cars is only 50 per cent of that in ordinary box cars, defendants contend that the insulated or refrigerator car "in its present design" is not a proper car for ice loading. On account of the moisture from the ice getting into the insulation, it is stated that the car deteriorates so fast as to be economically undesirable from a railroad standpoint. It is suggested that car builders have not yet determined what is the best insulation for ice cars. The Northwestern constructed 400 special ice cars in 1897, which, after 18 years of service, have almost outlived their usefulness. The average life of a box car is said to be between 22 and 24 years.

Many other contentions were made by both sides regarding the reasonableness of the rate and the character and suitability of the equipment furnished, which were of minor importance and really subordinate to the main points already discussed.

Upon consideration of the whole record we conclude and find that defendants have not shown that the present rate of 3.5 cents is just and reasonable for the service furnished. The showing as to cost of the service, the comparisons with other rates for substantially similar hauls to Chicago, the fact that the general transportation conditions surrounding the hauls involved have not changed, lead to the further conclusion, and we so find, that the former rate of 3 cents per 100 pounds will be a reasonable maximum rate for the future for the transportation of ice in carloads from these points of origin to Chicago when ordinary box cars are used.

Pewaukee, Wis., was designated in the complaint as one of the points of origin representative of those taking the 3.5-cent rate. The complaint, in essence, is against the 3.5-cent rate, and the case was so tried. It appears from the tariffs on file that the rate from Pewaukee to Chicago is 4 cents per 100 pounds and that it was increased from 3.5 cents at the same time the rate from the other and less distant points was increased from 3 cents to 3.5 cents. Our finding and order, therefore, refer to and include only those points of origin which now take the rate of 3.5 cents and which prior to November, 1914, took the rate of 3 cents.

As to the character of the equipment furnished by defendants for the ice traffic, we think that the record sustains the general allegation of complainants that a good many of the cars used are undesirable for this service. In warm weather a perishable commodity like ice requires good cars for its transportation. It is the duty of defendants to furnish such cars upon reasonable request. *Farmers' Cooperative Assn. v. C., B. & Q. R. R. Co.*, 34 I. C. C., 60. Complainants, however, demand more than good box cars. They demand insulated cars. While defendants have voluntarily furnished a large number of refrigerator, vegetable, and other insulated cars, the record indicates that such cars cost more, are more expensive to maintain, wear out quicker, and are less adaptable to other traffic than are ordinary box cars. It is also clear that the use of the insulated car in ice traffic increases the value of the service to the shipper, as the shrinkage is materially decreased and the cost of preparing the car with hay and paper is eliminated. The seasonal movement of the ice has been noted. For these reasons, an additional charge of 10 cents per ton, applicable to shipments transported in refrigerator or insulated cars, would be justified. *Mountain Ice Co. v. D., L. & W. R. R. Co.*, *supra*. It should be understood, however, that the publication of such a rate will require the defendants to furnish refrigerator or insulated cars upon reasonable request therefor. And if different rates are published, dependent upon the equipment used,

the shipper's right to order and to have the equipment desired must be recognized.

Complainants ask for reparation on all shipments that have been charged the 3.5-cent rate. The record shows that most of the ice shipped by complainants was sold f. o. b. the points of origin. As to such shipments there is no showing that complainants have been damaged. On all other shipments which were charged the rate of 3.5 cents per 100 pounds, and upon which complainants paid and bore the freight charges, we find that they have been damaged to the extent of one-half cent per 100 pounds. No order for reparation can be entered upon the present record. Complainants may prepare statements of their claims showing each shipment on which reparation is claimed, the date of movement, point of origin, point of destination, route, weight, car number and initials, rate applied, charges collected, and the amount of reparation due in accordance with the findings herein and submit them, together with the paid freight bills, to defendants for verification. After such verification the statements, supported by affidavits of claimants that they actually bore the charges, should be forwarded to the Commission, whereupon entry of an award of reparation will be considered.

An appropriate order will be entered.

87 L. C. C.

No. 7869.

STEAMSHIP "GREAT NORTHERN."

Submitted October 27, 1915. Decided December 24, 1915.

Upon an investigation into the ownership and operation of the steamships *Great Northern* and *Northern Pacific* by the Great Northern Pacific Steamship Company, and it being found that this steamship company is owned by the Spokane, Portland & Seattle Railway Company, which is, in turn, owned by the Great Northern Railway Company and the Northern Pacific Railway Company; *Held:*

1. The Northern Pacific Railway and Great Northern Railway and the Spokane, Portland & Seattle Railway do or may compete with these steamers in their operations between Flavel, Oreg., and San Francisco, Cal., within the meaning of the act.
2. The service of the Great Northern Steamship Company here considered is in the interest of the public and is of advantage to the convenience and commerce of the people. A continuance of same will neither exclude, prevent, nor reduce competition on the route by water, and should be permitted.
3. All the rates, fares, schedules, and regulations of the Great Northern Steamship Company covering traffic subject to the act moved by it in the operations considered herein must be filed with the Commission and posted to the public, as required by the act and the rules and regulations of the Commission.

J. B. Kerr for Great Northern Steamship Company; Spokane, Portland & Seattle Railway Company; and Northern Pacific Railway Company.

E. C. Lindley and *W. P. Kenney* for Great Northern Railway Company.

C. W. Bunn and *E. C. Lindley* for Northern Pacific Railway Company.

J. B. Campbell for Spokane Merchants Association, Spokane Chamber of Commerce, and other commercial organizations.

Jay W. McCune for Transportation Bureau of Tacoma.

T. H. Martin for Tacoma Commercial Club and Chamber of Commerce.

J. N. Teal for Portland Chamber of Commerce.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

This is an inquiry upon our own motion, under authority of section 5 of the act to regulate commerce as amended by the Panama Canal act, into the ownership and operation of the steamships *Northern Pacific* and *Great Northern*.

These steamers are owned and operated by the Great Northern Pacific Steamship Company, hereinafter referred to as the steamship company. The stock of that company, except qualifying directors' shares, is owned by the Spokane, Portland & Seattle Railway Company, the stock of which, except qualifying directors' shares, is owned in equal parts by the Northern Pacific Railway Company and the Great Northern Railway Company. All of these carriers were made parties to this proceeding. The three rail lines will be hereinafter referred to as respondents.

The questions presented for determination are: Do or may respondents compete with the steamship company and, if so, is the existing service by water being operated in the interest of the public and of advantage to the convenience and commerce of the people, and will a continuance of this service exclude, prevent, or reduce competition on the route by water?

The main lines of both the Northern Pacific and the Great Northern railways extend from Minneapolis, St. Paul, and Duluth, Minn., via Spokane, Wash., to Seattle, Wash., and Portland, Oreg., and the line of the Spokane, Portland & Seattle extends from Spokane to Portland, Astoria, and Flavel, Oreg. None of the respondents reaches San Francisco via its own rails and none of them has joint freight rates with the Southern Pacific to and from San Francisco except the Northern Pacific, but all of them participate with the Southern Pacific in joint passenger fares to and from San Francisco. They also participate in joint freight rates and passenger fares from and to points on their lines to and from San Francisco with the San Francisco & Portland Steamship Company and also with the North Pacific Steamship Company. The joint freight rates between the Northern Pacific and the Southern Pacific apply only via Tacoma or Seattle, and not via the Spokane, Portland & Seattle road. The Southern Pacific participates in joint freight rates from and to San Francisco with the Oregon-Washington Railroad & Navigation Company and its system connections.

Both the Great Northern Railway and the Spokane, Portland & Seattle have made repeated efforts to induce the Southern Pacific to participate with them in joint rates to and from San Francisco, but without success. For this reason respondents have long contemplated the establishment of a rail or water line extension of the Spokane, Portland & Seattle to San Francisco. The organization and operation of the Great Northern Pacific Steamship Company was the plan finally decided upon. The two steamers of this line operate between San Francisco and Flavel, Oreg., a point on the Spokane, Portland & Seattle 8 miles west of Astoria and 107 miles west of Portland. Between Flavel and Portland the transportation is over the line of

the Spokane, Portland & Seattle. These carriers, in connection with the Northern Pacific and Great Northern railways at Spokane, form through rail-and-water routes between the eastern termini of the Northern Pacific and Great Northern railways and San Francisco. Via these routes joint rates and fares apply to and from various points. The steamship company schedules three sailings a week from both San Francisco and Flavel.

The scheduled time for passengers between Portland and San Francisco via this new rail-and-water route is 30 hours; $8\frac{1}{2}$ hours between Portland and Flavel, one-half hour for transfer, and 26 hours between Flavel and San Francisco. This is about 8 hours less than the scheduled time of the Southern Pacific's passenger trains between Portland and San Francisco, excepting the Shasta Limited, and about 3 hours more than the scheduled time of that train.

The round trip fare between Portland and San Francisco via the steamship line is \$30, including berth and meals. The round trip fare on the Southern Pacific's trains, other than the Shasta Limited, is also \$30, but is exclusive of berth and meals. On the Shasta Limited an extra transportation fare of \$5 is charged each way. The rate for a lower Pullman berth between San Francisco and Portland is \$8.

The advantages derived from the new rail-and-water route are not confined to passengers. The freight service of the Southern Pacific between Portland and San Francisco averages about $4\frac{1}{2}$ days. The testimony of shippers, as well as that of respondents, is that this new route between Portland and San Francisco affords what, from the view of time consumed, might be termed an express service, at a freight rate.

The San Francisco & Portland Steamship Company and the North Pacific Steamship Company, as well as other independent steamship companies, operate between San Francisco and Portland and are active competitors of the steamship company. It appears that the freight rates between San Francisco and Portland via this new rail and water route are lower than the rates via the rail line of the Southern Pacific, and no higher than those of the other steamship companies operating between these points. The passenger fares, however, are higher than those of the other steamship lines.

Respondents vigorously urge that the steamship line is, in effect, but a rail extension of their lines, particularly that of the Spokane, Portland & Seattle Railway, to San Francisco, and that it can not in any sense compete with them. In *O.-W. R. & N. Co.'s Ownership of S. F. & P. S. S. Co.*, 34 I. C. C., 165, we considered an analogous situation. In that case we held that the Oregon-

Washington Railroad & Navigation Company by participating with the Southern Pacific in joint rates and fares from and to points on its line to and from San Francisco could compete with the San Francisco & Portland Steamship Company, owned by it, and operating between Portland and San Francisco. Following that case, and the decisions therein cited, we find that the respondents do or may compete for traffic with the steamship company, within the meaning of the act.

The uncontradicted testimony of representatives appearing at the hearing on behalf of municipal and commercial organizations of Portland, Seattle, Astoria, Spokane, Tacoma, Wash., and certain interior points as far east as Montana and Idaho, and of individual shippers, is that the operation of these boats by respondents through the steamship company is, and will continue to be, of great value to the northwest; that said operation is in the interest of the public and of advantage to the convenience and commerce of the people, and that a continuance thereof will neither exclude, prevent, nor reduce competition on the route by water. No protest against or objection to the continued operation appears.

We find that the operation of these boats by respondents through the steamship company is in the interest of the public and of advantage to the convenience and commerce of the people, and that a continuance thereof will neither exclude, prevent, nor reduce competition on the route by water under consideration. An order will be entered permitting a continuance of such operation subject to such further order or orders as may hereafter be entered by the Commission.

All the rates, fares, schedules, and regulations applicable to the transportation by the steamship company of traffic subject to the act moved by it in the operations considered herein, not now on file with us, must be filed with the Commission and posted to the public as required by the act to regulate commerce and the rules and regulations of the Commission on or before March 15, 1916.

After the *Great Northern* sailed from Philadelphia some question was raised as to her right to pass through the Panama Canal. Information as to the ownership of the boat was requested from us, which we were unable to give. Subsequently similar questions arose as to the *Northern Pacific*. We have, therefore, collected upon the hearing full data concerning these ships from the time of the letting of the contracts for their construction up to the date of the inauguration of the service between San Francisco and Flavel.

The *Northern Pacific* and the *Great Northern* are sister ships. Each is 524 feet in length over all, of 63 feet beam, 50.8 feet depth, and a tonnage of 8,225 tons. Each has a carrying capacity of 856

passengers and 2,185 tons of freight. They are triple screw steamers, each equipped with 25,000 horsepower turbine engines, and have a guaranteed speed of 23 knots an hour and a maximum speed of between 24 and 25 knots.

Their construction was in contemplation as early as 1909. The contracts for building them were made in April, 1913, by the Spokane, Portland & Seattle Railway Company with the Wm. Cramp & Sons Ship & Engine Building Company of Philadelphia. The contract price was \$1,945,000 for each ship. The *Great Northern* was completed January 27, 1915, sailed from Philadelphia on that date, and passed through the canal February 2, 1915. The *Northern Pacific* was completed March 25, 1915, sailed from Philadelphia on that date, and passed through the canal March 31, 1915. Each ship on its trip through the canal carried passengers and cargo, each cargo consisting of wire and nails, root beer, and root-beer extract. The *Northern Pacific* carried some advertising matter and the *Great Northern* some wire fencing, in addition. Upon arrival at San Francisco the *Great Northern* continued on a trial trip to Honolulu and Hilo, Hawaii, and return to San Francisco, retaining, by consent of the consignees, as ballast, and without additional charge, the cargo which she carried through the canal. The freight and most of the passengers carried through the canal were destined to San Francisco. A few of the passengers were en route to Los Angeles and San Diego. None of the freight or passengers was destined to any point north of San Francisco. Freight was charged at the rate of 25 cents per 100 pounds by one of the vessels and 35 cents per 100 pounds by the other. The Northern Pacific Railway participated at the time in rail rates from Philadelphia to San Francisco of 80 cents per 100 pounds on wire and nails, and 85 cents on root beer and root-beer extract, but the testimony of respondents is that to the best of their knowledge none of these articles has ever been sent in carloads to San Francisco over their lines.

The Great Northern Pacific Steamship Company was not organized until September 30, 1914. On November 28, 1914, title to the uncompleted ships was formally transferred from the Spokane, Portland & Seattle to the Great Northern Pacific Steamship Company. Both before and since the organization of the steamship company and the formal transfer of title to the ships all payments under the contracts for construction of the ships, which provided for payments in monthly installments, have been made by the Spokane, Portland & Seattle, that carrier taking stock of the steamship company in return for such payments. The contracts provided that title should pass as payments were made.

No. 52 (Ex Parte).

IN THE MATTER OF FILING WITH THE INTERSTATE
COMMERCE COMMISSION DIVISIONS OF JOINT RATES
APPLICABLE TO RAILWAY FUEL COAL.

December 22, 1915.

1. Rulings of the Commission relative to rates and divisions of rates on fuel coal reviewed.
2. Commission deems it desirable that all carriers subject to its jurisdiction be required to file their divisions of joint rates applicable on railway fuel coal, in the transportation of which they participate, and that they be required further, when changes are made in such divisions, to file a statement of facts relied upon as justification for such changes. An appropriate general order will issue under the provisions of section 6.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

It was announced in *Rates on Railroad Fuel and Other Coal*, 36 I. C. C., 1, that the conclusions reached therein should be adhered to generally. We found, among other things, that the carriers parties to the record were making special and abnormal divisions of certain joint rates on fuel coal with the result that purchasing carriers were receiving excessive divisions disproportionate to the transportation services rendered by them and out of line with the divisions which they received in connection with the transportation of commercial coal. This was declared unlawful and respondents were ordered to cease and desist from such practices and to file with this Commission, in accordance with the provisions of section 6 of the act to regulate commerce, all divisions accruing to each carrier participating in joint rates for the interstate transportation of fuel coal for consumption by any of such carriers, together with statements of the facts which were relied upon as justification for the amounts of the divisions.

In the past many devices have been resorted to by carriers in an effort to obtain the transportation of railway fuel coal at rates less than those available to shippers of commercial coal between the same points. The underlying question has been before the Commission repeatedly, both formally and informally.

On February 8, 1908, Conference Ruling No. 84 was issued.

Coal used for steam purposes not entitled to reduced rates.—A tariff providing for reduced rates on coal used for steam purposes, or that the carrier will

37 I. C. C.

refund part of the regular tariff charges on presentation of evidence that the coal was so used, is improper and unlawful. That is to say, the carrier has no right to attempt to dictate the uses to which commodities transported by it shall be put in order to enjoy a transportation rate.

This was followed November 13, 1908, by Conference Ruling No. 225.

Carriers may not be given preferential rates.—(a) In answer to inquiries the Commission expresses the opinion that under the law a carrier, or a person or corporation operating a railroad or other transportation line, may not, as a shipper over the lines of another carrier, be given preference in the application of tariff rates on interstate shipments, but it may lawfully and properly take advantage of legal tariff joint rates applying to a convenient junction or other point on its own line, provided such shipments are consigned through to such point from point of origin and are, in good faith, sent to such billed destination. • • •

During 1910 the entire question was considered formally in *In the Matter of Restricted Rates*, 20 I. C. C., 426, and it was there held that rates for the transportation of railway fuel coal lower than the rates applicable to the transportation of commercial coal between the same points were unlawful. The Commission again recognized the right of the purchasing carrier to participate in a joint rate applicable from point of origin of the fuel coal to a point of destination on its line. In order, however, to emphasize the fact that this right of the purchasing carrier could not be used as a device to bring about the results prohibited in the *Restricted Rates* case, on June 19, 1911, Conference Ruling No. 324 was issued.

Divisions of company coal.—Upon inquiry: *Held*, That it is unlawful for carriers to make special and discriminatory divisions of joint rates upon locomotive fuel as between an originating or participating carrier and a purchasing carrier. In the division of joint rates a railroad must be treated precisely as any other shipper is treated, and the Commission will regard any special division as a device to defeat the published rate. All divisions upon fuel coal must be made in good faith without respect to the fact that one of the carriers is the purchaser of such coal.

In *In re Divisions of Joint Rates on Coal*, 22 I. C. C., 51, the Commission said:

It has often been said by this Commission that the law has no concern with the divisions of rates which carriers make by agreement with each other; but this principle has very decided limitations. If a railroad is a shipper, or is owned by a shipper, or is so linked up with a shipper that a division of a rate means a rebate or a discrimination in favor of or an advantage to a shipper, the Commission may properly look into the nature of the service which the carrier gives and the division which it receives.

In *In the Matter of Transportation of Company Material*, 22 I. C. C., 439, after citing cases which acknowledged the right of pur-
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chasing carriers of fuel coal to participate in joint rates, the Commission stated:

To all of the above rulings we still adhere, but now, as when they were made, with the understanding that they apply only to bona fide transactions made and carried out in good faith. They were not originally intended and are not now intended as opportunities or cloaks for any practices which in purpose or in effect result directly or indirectly in departure from lawful tariff rates and charges or under which a carrier is given any preference over any other shipper of the same commodity between the same points.

In *Rates on Railroad Fuel and Other Coal, supra*, the Commission said:

The railroad company as a shipper or consignee is entitled to the same consideration as any commercial shipper or consignee and no more, and this is true when the shipment moves partly over the rails of the carrier that is in fact the shipper or consignee. It necessarily follows that in such cases the carrier is entitled to a division of the joint through rate. But that division must be fixed by the same considerations which would determine the divisions upon through commercial shipments in which the railroads have no other interest than that of a carrier.

The Commission can at any time require the filing of divisions of joint rates. In *the Matter of Restricted Rates, supra*; *Rates on Railroad Fuel and Other Coal, supra*.

In order that the Commission may be in a position to enforce compliance with the law, it is deemed desirable that all carriers subject to our jurisdiction be required to file their divisions of joint rates applicable on railway fuel coal in the transportation of which they participate, and that they be required further, when changes are made in such divisions, to file a statement of the facts relied upon as justification for such changes. An appropriate general order under the provisions of section 6 will issue.

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No. 7730.
GEORGE T. MACE ET AL
v.
PENNSYLVANIA RAILROAD COMPANY ET AL

Submitted June 18, 1915. Decided December 22, 1915.

Increased commutation fares on the Philadelphia, Baltimore & Washington Railroad Company between Baltimore and Washington justified.

I. Q. H. Alward for complainants.

J. H. Boyden for residents of Glenndale, Md., complainants.

Henry Wolf Biklé for defendants.

REPORT OF THE COMMISSION.

DANIELS, Commissioner:

The Philadelphia, Baltimore & Washington Railroad Company on December 15, 1914, increased its commutation fares between Washington, D. C., and points on its line between Baltimore and Washington, including the Popes Creek branch, by 25 cents in the price of the 60-trip ticket. The price of the 180-trip ticket was made three times that of the new 60-trip ticket instead of being sold as theretofore at a relative discount of 25 per cent; and the 50-trip annual ticket was withdrawn. Commutation tickets instead of being issued good for calendar months only were made available for definite periods from the date of purchase.

The price of the 60-trip ticket upon the Baltimore & Ohio Railroad between Washington and stations between Baltimore and Washington was and is on a lower plane than the former price of the 60-trip ticket upon the Philadelphia, Baltimore & Washington; and the increase which was proposed by the Baltimore & Ohio in its 60-trip ticket and which was denied by the Commission was in many cases as high as 60 cents, while the increased price of the 60-trip tickets upon the Philadelphia, Baltimore & Washington is but 25 cents in excess of the former price in every instance. This large percentage of proposed increase appearing, the Commission suspended fares proposed in the tariffs of the Baltimore & Ohio Railroad.

The defendants in the present case assign as reasons for the change in the commutation fares that under the finding of *The Five Per Cent Case*, 31 I. C. C., 351, it is entitled to more revenue from

its passenger traffic generally; and that this particular commutation business was not only unprofitable under the old fares, but did not even pay the cost of operation.

Account was kept during the year 1914 of the revenue derived from the local trains on the Philadelphia, Baltimore & Washington Railroad between Baltimore and Washington. The revenue from the sale of commutation tickets purchased by passengers traveling on these trains was given by the Philadelphia, Baltimore & Washington as \$22,339.08; that from tickets other than commutation, \$60,571.65; or a total of \$82,910.73. The revenue of these local trains averages 40 cents per train-mile, the earnings from particular trains varying from 10 cents to \$1.28 per train-mile. This figure of 40 cents per train-mile is contrasted with \$1.39, the average earnings on the Philadelphia, Baltimore & Washington system, and with \$1.51 upon its Maryland division.

Forty cents a train-mile was obtained, however, by dividing 206,499 train-miles into the total passenger revenue of \$82,599.60, and the train mileage included train-miles of certain trains whose operation was discontinued during 1914. Three trains were discontinued after September 14, 1914, and one train was added on September 15, 1914. If the same train service which exists to-day on this line had been in operation during the whole of 1914, the train mileage would have been 17,688 less and the passenger train-mile earnings would have been 43.9 cents instead of 40 cents.

An estimate was also presented by the defendants of the partial costs of movement of the trains carrying the traffic in question, itemized as follows:

Partial cost per train-mile. Baltimore and Washington (local trains).

	Cents.
1. Wages of train crew.....	17. 71
2. Locomotives, fuel for road.....	12. 18
3. Locomotives, repairs	11. 26
4. Engine-house expenses, yard and road.....	2. 87
5. Locomotives, lubricants .....	. 29
6. Locomotives, other supplies, yard and road.....	. 86
7. Locomotives, depreciation	2. 00
8. Passenger cars, repairs	5. 64
9. Passenger cars, depreciation	1. 44
10. Passenger cars, lubricants .....	. 05
11. Maintenance of way and structures.....	83. 61

87. 41

Strictly passenger proportion of passenger train, 82.43 per cent..... 72. 05

NOTE.—Express, mail, and miscellaneous matter is carried on these trains, and this expense is arrived at by taking on the Maryland division the total passenger car-miles, the car-miles in the mail service, the car-miles in the express service, and the car-miles in the combined service, divided according
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to the car foot space occupied. In this way, it is estimated that the 82.43 per cent represents the amount of space on passenger trains used by passengers, exclusive of mail and express matter.

The defendants offer the item of wages of the train crew as representing what was actually paid out for the labor performed. The size of the item 33.61 cents, given as the expense of maintenance of way and structures, may be questioned on the ground that it is hardly equitable to charge a passenger train of a locomotive and two cars, such as is generally employed in the commutation traffic, a toll per mile for the use of the track which is equal to the average for all trains, whether freight or passenger, on the Maryland division of the Philadelphia, Baltimore & Washington.

The fuel per train-mile for the locomotives used is obtained by taking the actual fuel consumption of the passenger locomotives on the Philadelphia, Baltimore & Washington system and finding out the average per mile run. The item of locomotive repairs is figured upon the average per mile of the cost of repairs on the Pennsylvania lines east of Pittsburgh of both passenger and freight locomotives. The item for engine-house expenses is an average for the Philadelphia, Baltimore & Washington system. The item of lubricants for locomotives is an average figure per mile on the Philadelphia, Baltimore & Washington system. Depreciation of locomotives is arrived at by taking a rate per locomotive-mile of 2 cents, which is based upon taking arbitrarily 4 per cent of the cost of equipment reduced to a locomotive-mile basis, the life of a locomotive being assumed to be approximately 25 years. The item for repairs to passenger cars represents the cost of repairs per car-mile of all the passenger equipment in use on the Pennsylvania lines east of Pittsburgh multiplied by the number of cars in the train. The item of depreciation of passenger cars is arrived at by the same method as is used with regard to locomotives, save that the rate is taken as 4 per cent on wooden cars and 2½ per cent on steel cars. The figure for lubricants for passenger cars is an average for the Philadelphia, Baltimore & Washington system.

The partial expenses per train-mile of 72.05 cents were contrasted with the expenses of 114.5 cents upon the Philadelphia, Baltimore & Washington system as a whole and with 113.5 cents upon the Maryland division.

The total number of train-miles of the trains carrying this commutation traffic and included in the estimate was given as 206,499; the operating revenue obtained by multiplying this number by 40 cents is \$82,599.60, and part of the operating expenses, obtained by multiplying the number of train-miles by 72.05 cents, is \$148,782.53. Deducting \$82,599.60 from \$148,782.53, an excess of \$66,182.93 of partial operating expenses over operating revenue for the year 1914 is indicated upon these local trains between Baltimore and Washington.

It must be remembered that the cost estimate was only partial, and that it does not include a number of expense items, such as equipment repairs and renewals, certain yard expenses, cost of publication and filing of tariffs, of securing traffic, and terminal expenses. The interest on the money invested in the locomotives and cars is as directly chargeable to each train as is fuel, and this factor of cost is omitted from the computation.

The percentage of use to potential seating capacity of these trains is small; it was testified that on week days this was but 12 per cent, while on Sundays it rose to 17 per cent. This was compared with the figures upon the main line of the Pennsylvania Railroad from Philadelphia to Paoli, where the use of the potential seating capacity is about 30 per cent, and where the commutation fares are the same as those under attack in this proceeding.

The train service in this local traffic taken as a whole does not appear to have been remunerative, even when viewed as a by-product of the main passenger business. In 1914 the number of commutation passengers between Baltimore and Washington was 169,067, as against 175,004 noncommutation passengers. So that while about 49 per cent of the total number of passengers on these local trains between Baltimore and Washington traveled on commutation tickets, only about 27 per cent of the revenues of these trains in that year was derived from the sale of commutation tickets. The existing commutation fares of the Philadelphia, Baltimore & Washington under attack not only do not appear to cover the total cost of carrying the commutation traffic, but not even such items of cost as can be directly assigned to that traffic. In the case of *Commutation Fares to and from Washington, D. C.*, 33 I. C. C., 428, where the tariffs of the Baltimore & Ohio were in issue, at page 434, the Commission found "that treating the two branches as a whole the total earnings just about cover operating costs," and the respondent there was permitted to increase its revenue from commutation traffic by the abolition of the 180-trip ticket, which most of the daily commuters used, and also of the 24 and 50 trip tickets, and by increasing the price of the 10-trip ticket, though it was not allowed to increase the price of the 60-trip ticket.

In the instant case it appears that the 180-trip ticket was sold by the Philadelphia, Baltimore & Washington only between Washington and stations as far as Bowie, but that the bulk of this commutation traffic is between Washington and stations no farther than Bowie. The succeeding table shows the stations, distances, the number and prices of 60 and 180 trip tickets sold by the Philadelphia, Baltimore & Washington during 1914.

Station.	Miles.	60-trip.			180-trip.		
		Number sold in 1914.	Price.		Number sold in 1914.	Price.	
			Old.	New.		Old.	New.
Tuxedo.....	5.6	16	\$4.35	\$4.60	41	\$9.80	\$12.35
Landover.....	7.1	87	4.80	5.05	83	10.80	11.15
Ardwick.....	8.6	35	5.25	5.50	24	11.00	11.50
Lanham.....	9.8	104	5.70	5.95	122	12.25	12.65
Seabrook.....	11.2	69	6.00	6.25	48	12.50	12.75
Glenndale.....	12.8	29	6.60	6.85	75	14.25	14.65
Springfield.....	14.0	29	7.00	7.15	19	14.55	14.65
Bowie.....	15.4	148	7.35	7.60	58	14.55	14.65
Total.....		517			530		

Beyond Bowie, including Popes Creek branch and excluding Baltimore, 253 of the 60-trip tickets were sold.

This table shows that the commutation traffic is light and that about three times as many commuters traveled upon the 180-trip ticket where it was offered for sale, as upon the 60-trip ticket, for, of course, three 60-trip tickets must be purchased to span the life of one 180-trip ticket.

The carriers urged, as an additional reason for permitting the increase in the price of the 60-trip ticket, that their commutation fares were uniformly increased, and that the amounts charged under the new scale conformed to the standard adopted upon its system east of Pittsburgh, save for traffic in and out of New York, where competition compelled the continuance of what, it was urged, were relatively low commutation fares. While uniformity is generally desirable in the making of passenger fares, local conditions have too often been urged as reasons for lower or higher fares in particular localities to give this contention much force in the present situation.

The disparity between commutation receipts and the estimated expense of commutation traffic on the former basis of fares is apparently too great to warrant an assumption that the increased fares are likely to prove more than reasonably compensatory.

We are of opinion and find that the increased prices of the 60-trip tickets and the 180-trip tickets between the points herein under consideration have been justified; that the abolition of the 50-trip ticket has also been justified.

The complaint asked that the defendants be compelled to establish a 46-trip school ticket. The carriers answered that it was not willing to sell such a ticket to all persons between certain prescribed ages, but expressed a willingness to establish this ticket limited to persons attending school. However, the defendants assert that in their belief the Commission has declared such a form of ticket unduly discriminatory, and that therefore they were debarred from instituting commutation service on that basis.

In *Commutation Tickets to School Children*, 17 I. C. C., 144, and in *Bitzer v. W.-V. Ry. Co.*, 24 I. C. C., 255, the Commission has held that commutation school tickets are unduly discriminatory, and until Congress shall specifically by statute include such traffic within the classes to which carriers may accord reduced rates of fare the Commission is disposed not to recede from its findings and conclusions as recited in the above-named cases.

An order of dismissal of the formal complaint will issue.

CLEMENTS, *Commissioner*, dissenting:

For reasons explained at length in my dissent from the report of the Commission in *Commutation Fares to and from Washington, D. C.*, 33 I. C. C., 428, I am unable to agree with the foregoing report.

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**INVESTIGATION AND SUSPENSION DOCKET No. 144.
THE DETROIT RECONSIGNING CASE.**

No. 7760.

DETROIT COAL COMPANY

v.

MICHIGAN CENTRAL RAILROAD COMPANY.

Submitted October 15, 1915. Decided December 18, 1915.

The tariffs of respondents authorized, under certain circumstances, a charge of \$2 per car for reconsigning coal at Detroit, Mich., to points within the switching limits of that city, but the provisions of the tariff did not, as contended by the complainant, make the imposition of the charge conditional upon the terminal carriers having first given the consignee at Detroit notice that the car had arrived at Toledo, Ohio. Charges collected upon the shipments involved in the complaint not shown to have been unreasonable. Reparation denied and complaint dismissed.

H. H. Smith and Beaumont, Smith & Harris for complainant and interveners.

D. P. Connell and J. J. Danhof for Michigan Central Railroad.

C. M. Booth for Pere Marquette Railroad.

J. A. Sullivan for Wabash Railroad.

E. B. Dudley for Detroit, Toledo & Ironton Railway.

L. C. Stanley for Detroit & Toledo Shore Line.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

Two questions are involved in these cases: 1. Did certain tariffs of the respondent carriers authorize the imposition of a charge for the reconsignment of cars of coal at Detroit to points within the switching limits of that city in instances where the carrier had not given the consignee notice of the arrival of the car on its tracks at Toledo prior to its arrival at Detroit? 2. If the tariffs did authorize such a charge, was it reasonable under all the circumstances?

The limited terminals at Detroit and the severe congestions of traffic resulting therefrom in the past, together with the history of the practices and of the rules, regulations, and charges for the reconsignment of coal at and from that point in effect prior to the fall of 1912 are described at some length in *Detroit Traffic Assn. v. L. S. &*

M. S. Ry. Co., 21 I. C. C., 257, and in *The Detroit Reconsigning Case*, 25 I. C. C., 392. In the latter report we held that a charge of \$2 a car, for reconsigning, to points within the switching district of Detroit, carload shipments of coal received at that point, was not discriminatory and was "not unreasonable when considered by itself and wholly apart from the conditions that have occasioned the congestion at Detroit or in a material measure contribute to it." It appeared, however, upon the argument in that case that one of the lines entering Detroit had theretofore voluntarily undertaken to notify consignees of the arrival of their coal cars on its tracks at Toledo, and that the result had been practically to relieve it of any embarrassment in the handling of its coal traffic at Detroit. Upon the general ground that the carriers ought to do what they reasonably can to avoid delays to traffic and, believing that a practice apparently successful with one line would, if made general, go far toward eliminating the congestion on the terminals of other lines at Detroit and inure generally to the advantage both of shippers and carriers, we said, *id.*, p. 395, without entering any order, that—

We think * * * on all the facts shown of record that this is a duty that they owe to the shippers, and that it is unreasonable and would impose an unjust burden on the traffic to exact a reconsigning charge without undertaking the duty of giving such notice to consignees, thus affording them an opportunity of giving disposition orders before their carload shipments reach the Detroit terminals, where the service of reconsigning becomes an expensive one to the carriers.

We have reached these conclusions on the special conditions shown to exist at Detroit, and we shall expect the delivering lines at that point to make arrangements without delay for putting in effect the practice of giving notice to consignees of the arrival of the coal cars on their respective tracks at Toledo and to provide in their tariffs that the reconsigning charge will not be imposed in any case when the reconsigning order is given by the consignee before the car reaches Detroit. If the coal dealers having such notice are not able to give their reconsigning orders before the cars reach Detroit, it is entirely just and reasonable that they should pay the proposed charge for the reconsigning service.

All the respondents, with two exceptions, promptly filed tariffs purporting to be in compliance with our recommendations. The Detroit & Toledo Shore Line Railroad, hereinafter referred to as the Shore Line, and the Detroit, Toledo & Ironton Railway, however, did not file any such tariffs until more than six months later and after the close of the winter of 1912, during which it was thought the carriers' experience would develop the merits and defects of the practice recommended.

In the fall of 1914 the Lake Shore & Michigan Southern, the Michigan Central, and the Wabash railroads asked that the case be assigned for further hearing, so that the question of giving the passing notice might be again considered. It was alleged that experience

had proved the practice to be unsatisfactory, both to shippers and carriers, and that it worked out in an unequal manner and inequitably as between different receivers of coal in carloads.

Certain coal dealers at Detroit in reply to the carriers' petition denied more or less specifically the matters alleged in it and asked that the case be not set for further hearing. The record was reopened, however, by appropriate order. Later the Detroit Coal Company filed the above-entitled complaint, in which it alleges (1) that the tariff of the respondent, the Michigan Central Railroad Company, in violation of section 6 of the act, did not plainly state the terminal charges and rules and regulations affecting and determining the charge for the services rendered in connection with the reconsignment of six certain specified cars which moved after the tariffs naming the \$2 charge became effective; (2) that under the tariff the reconsigning charge should not be assessed unless notice had been received by the Detroit consignee before the car left Toledo or Jackson; (3) that the charges assessed on the cars specified in the complaint were unjust and unreasonable and in violation of section 1 of the act.

The original proceeding and the new formal complaint were consolidated and both are now before us for disposition. Upon the hearing, a petition to intervene in the formal complaint was filed by the Detroit Coal Exchange. It recites that the members of the exchange are interested in the reconsignment of coal and had taken part in the previous litigation. It sets forth that the formal complaint by the Detroit Coal Company was filed for the purpose of testing the validity of the charges assessed upon the six selected cars therein specified and described, which shipments were typical of a large number of carloads on which reconsignment charges had been assessed by the carriers; that the validity of these charges was disputed by the coal companies and the payment thereof refused; and that if the Commission should find that the Detroit Coal Company is liable for the reconsigning charges assessed on the six selected cars, the finding would affect the rights of the interveners in that their liability would thereby be determined upon a large number of cars reconsigned under similar circumstances. The intervening petition sets forth also that the complaint of the Detroit Coal Company does not raise the question whether the reconsignment rule in the tariff of the Michigan Central was a reasonable rule. It prays, therefore, that the Commission will construe the Michigan Central's tariff provision as requiring previous notice of arrival as a basis for the charge; but in the event it is not susceptible of that construction that the Commission shall find the provision to have been—unreasonable and unjustly discriminatory and unduly preferential in that it did not provide that no charge should be made for the reconsignment of

cars unless prompt and reasonable notice of the arrival at Toledo had been given to the consignee thereof within a reasonable time before the arrival of the car in Detroit.

The intervening petition further prays that in any event the charges assessed, but not paid, where no notice of the character described had been given, shall be canceled and set aside and that the members of the Detroit Coal Exchange may have reparation for all charges paid where no such notice was given.

Early during the hearing it developed that the situation at Detroit had materially changed since our report in *The Detroit Reconsigning Case, supra*, was handed down. It appears that the Shore Line afterwards canceled its tariff embodying the provision for the giving of notice at Toledo, and in lieu thereof established a provision to the effect that a \$2 charge would be assessed for reconsignments to points within the Detroit switching limits unless notice of the desired reconsignment was received within 24 hours after the first 7 a. m. after the day on which notice of the arrival of the car within the switching limits of Detroit is sent to the consignee, in which latter event no charge would be made. It is intimated upon the record that this action by the Shore Line induced the Lake Shore, Michigan Central, and Wabash railroads to petition for a reopening of the original record. However that may be, all the other delivering carriers soon followed the lead of the Shore Line and, canceling their provisions with respect to the giving of notice of passing Toledo, established, each for itself and at successive periods, rules identical with that of the Shore Line.

The situation presented upon the hearing, and in respect of which there was a tacit understanding between all the parties in interest, is fairly stated upon the brief of counsel for the Detroit Coal Exchange as follows:

So far, therefore, as the question of the operation of the reconsignment privilege is concerned, that question has been removed by the voluntary act of the carriers. They have canceled the tariffs which were filed to conform to the order of the Commission. The consignees have not complained. The situation presents no difficulties. There is no congestion either at Toledo or at Detroit. In no way whatever is there any dissatisfaction. The Commission has, so far as the present tariffs are concerned, nothing to investigate and none of the parties is complaining to it. This situation became at once apparent on the hearing.

There is, however, one phase of the matter of interest both to the dealers in coal, the carriers, and the Commission, and that is the status of the reconsignment charges assessed under the Toledo notification tariffs. It was to this question that the investigation was mainly addressed.

What is sought, therefore, is reparation where the reconsignment charge was paid under the previous tariffs, and authorization by us not to pay the charge in instances where the payment was withheld by the consignees. It was frankly admitted by all the parties in interest,

including the respondents, that the complaint of the Detroit Coal Company, praying for relief with respect to six carload shipments of coal reconsigned at Detroit, had been arranged as a test case, and that the Commission's ruling with respect to those cars would be accepted on all hands as determining the validity of charges, amounting in the aggregate to large sums, which the terminal carriers at Detroit had assessed upon many thousands of cars reconsigned at that point, but which the coal dealers, acting upon their own interpretation of the tariffs of the terminal lines, had refused to pay. We are brought, therefore, to a consideration of the language of the tariffs in that connection.

The provision relating to the reconsigning charge as published in the tariffs of the Michigan Central may be taken as characteristic and as typical of the provision appearing in the tariffs of the other respondent lines. It is as follows:

4. *Detroit switching district*.—On carload traffic consigned for delivery within the switching limits of the city of Detroit, the billing from point of origin must show name of consignee and specific delivery (see note) required.

(a) A reconsigning charge of \$2 per car will be assessed for any change in the billing as originally made affecting either consignee, destination, or delivery, except when reconsigning orders are received by A. J. Glauque, agent, Michigan Central Railroad, Detroit, Mich., or J. E. Maire, agent, Michigan Central Railroad, Junction Yard (Detroit), Mich., prior to arrival of cars in Detroit switching district.

Upon written request the Michigan Central Railroad will notify consignees at Detroit of arrival of cars on rails of the Michigan Central Railroad at Toledo, Ohio, or Jackson, Mich.

The headnote of the report in *The Detroit Reconsigning Case* appears to overstate the findings of the report itself, and it may be that the coal dealers of Detroit have thus been under a misapprehension as to the purport of the findings in that case. However that may be, it is obvious from a study of its language that the provision for assessing the reconsigning charge was not conditioned upon the consignee at Detroit having first been notified of the arrival of the car at Toledo, and we hold that the provision for the reconsigning charge of \$2 at Detroit was not so limited or conditioned.

Nothing of record tends to cast any doubt upon the correctness of our holding in *The Detroit Reconsigning Case, supra*, that there is no unjust discrimination in a charge for reconsigning cars of coal at points within the switching district at Detroit in favor of dealers in the same commodity at other points. Undoubtedly, as stated in that report, the service within the switching district at Detroit is more expensive than the service of reconsignment to points beyond for which we have approved a charge of \$2 per car; and no evidence of record appears to impair the soundness of our previous finding that the charge of \$2 was, and is, reasonable in and of itself. There remains, therefore,

only the question whether or not the collection of such a charge was unreasonable in the absence of notice to the consignee at Detroit of the arrival of the car upon tracks at Toledo in ample time for the consignee to give the carrier a reconsigning order before the car should arrive at Detroit. This is to be determined from a consideration of all the circumstances and conditions attending the handling of the traffic.

When the situation in the Detroit switching limits was before us originally, the record showed that the Detroit terminals were badly congested and choked with cars held for reconsignment. It showed, also, that the facilities of the carriers between Toledo and Detroit were likewise crowded with cars which could not be taken into Detroit until room was made for them. Several days often intervened in the transit from Toledo to Detroit. Under such circumstances it seems to have been ordinarily practicable and comparatively easy for the carriers, prior to the arrival of the car at Detroit, to give the consignee in that city notice of the arrival upon tracks at Toledo, and it is obvious that the giving of such notice would tend to expedite the handling of the car in the Detroit terminals.

Following the winter of 1911-12, during which conditions in the Detroit terminals were most unsatisfactory, the carriers serving that city united with shippers and commercial organizations in an effort to remove and prevent a recurrence of such conditions. As practical measures to these ends additional private sidings were constructed and storage facilities were increased. The Shore Line at the time of the former hearing had no terminal facilities of its own, but depended upon the Grand Trunk Railway's facilities. In the summer of 1913 the Shore Line began the construction of extensive yards at Dearoad, outside of Detroit, and in the fall of 1914 these yards were available for use. During that winter they were found to be large enough to meet all demands made upon them. They are used exclusively for the holding and storage of coal and enable the Shore Line, handling, as it does, the bulk of the traffic, to practically dominate the coal traffic situation in Detroit. There is therefore no congestion of coal cars in the Detroit terminals at the present time, and the possibility of a recurrence of the conditions of 1911-12 has been minimized by the changed local situation.

At the time our report in *The Detroit Reconsigning Case, supra*, was promulgated we were not unmindful of the fact that the practice suggested to the carriers of giving the passing notice was experimental and that unforeseen difficulties might arise which would require some modifications of our recommendations. We therefore said:

We shall, however, hold the record before us for such further orders in the premises as experience during the coming winter, under the plan here proposed, may require.

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During the time these changes in the terminal situation were taking place, the carriers were operating under the rule purporting to have been established in compliance with our suggestions. That is to say, although the provision for a reconsigning charge was not conditioned upon the giving of the passing notice at Toledo, the carriers, or several of them at least, were endeavoring to give such notice; and their efforts had the hoped for result in that the notice, when successfully given before the car reached Detroit, contributed very much to the relief of the terminal situation. But with the clearing up of the terminals the carriers began to experience difficulties in giving the notice in sufficient time to enable the consignee to give a reconsigning order. The reason of this is obvious from a study of the situation. The conditions of extreme congestion in the terminals proper such as prevailed in the winter of 1911-12, being reflected back along the line, gave ample time for the carriers to issue the notice and for the consignees to place their reconsigning order. Improved conditions at Detroit, however, were likewise reflected back along the line to Toledo, and the transportation from that point to Detroit soon came to require less time than during the period of congestion. A "dead freight" train of maximum tonnage would be moved, under normal conditions, from Toledo to Detroit in five or six hours. The running time of the Shore Line from Toledo to its hold yards outside of Detroit is very much less than that of any other carrier and is said to average practically two hours. That line operates only freight trains and 75 per cent of its traffic is coal.

The clerical work necessary, the time consumed in relaying the information from one office to another, and other incidents attending the preparation and service of passing notices often rendered it impossible to deliver the notice to the consignees at Detroit before the arrival of the car at that point. Moreover, the offices of the consignees were ordinarily closed from 5 p. m. until 9 a. m. of the next day, and no notice could be delivered between these hours or on Sundays or holidays. Consignees who received notice in the morning soon after the cars had left Toledo would have the major portion of the day in which to give their reconsigning orders, while consignees to whom notice was sent during hours when their offices were closed would have no opportunity to give reconsigning orders, the cars having arrived in the interim.

Although the carriers' offices, on the other hand, were never closed, they operated at night with a smaller force of employees than during the day, and it appears that the employees to whom the work of handling reconsignments was especially committed were not on duty at night. So far as the record shows, the carriers made no effort on Sundays, holidays, or at night to deliver notice of the arrival of cars, for the reason, as stated by one witness, that it was well known

that the offices of the consignees were then closed. Counsel for the interveners contends that the carriers are chargeable with failure to give notice on such occasions and at such hours, and argues that they should, at least, have tendered or sent notice to the offices of the consignees. The record does not show that the receivers of coal manifested any desire to receive notices during the night or on Sundays or holidays, when their offices were ordinarily closed. The attitude of the receivers of coal, so far as it appears from the record, negatives any suggestion of cooperation on their part in respect to the acceptance of notices at any other time than during their regular office hours.

It was suggested upon brief that it would not have been impracticable for the receivers of coal to have provided the carriers' reconsigning clerks with advance orders to take care of arrivals during the night or on Sundays or holidays. But the record gives no color of probability to the suggestion that the giving of such advance notice to the carriers' reconsigning clerks would have effected any result when, as appears from the record, cars of which notices were successfully given frequently remained in the yards and no reconsigning orders were given on them until demurrage had accrued. It was also suggested upon argument that the shippers could have given the carriers blanket orders to take care of cars arriving at times when the shippers' offices were closed. It seems to us that this would have necessitated the giving of blanket orders to take care of all night arrivals, and therefore would have required the giving of such blanket orders every day. We perceive no logical force in a suggestion which contemplates that the carriers should, in effect, solicit advance orders for reconsignments which the shippers might possibly desire to make. The suggestion seems to convey the idea that reconsignments would always be made as a matter of course and by wholesale, so to speak, and without instructions as to the specific point of delivery.

The Detroit, Toledo & Ironton for some time attempted to give the consignees notice of passing of cars at Napoleon. Finding it frequently impossible to give such notice before the arrival of the car at Detroit, it resorted to the expedient of giving the consignees notice when the cars passed Springfield, whereupon the consignees protested that the time between the receipt of the notice and the arrival of the car in Detroit was too long. One of the consignees, who is now being sued for reconsigning charges which he has refused to pay, admitted that it was not always possible for the carrier to give notice. His offices are closed at night, on holidays, and from 1 p. m. Saturday until Monday morning. He handles hundreds of cars each month and testified that only once or twice during the period covered by the in-

vestigation had he sought to have reconsignments made on Sunday. He admitted that the carrier could not hold up traffic arriving at Toledo on Sundays or holidays, but he seemed to think that the carrier ought to assume the burden of any traffic arriving at Detroit on Sundays or holidays.

The conclusion fairly to be drawn from the evidence is that the practice of giving the Detroit consignee advance notice of passing Toledo, while apparently a practicable and admittedly a highly beneficial expedient under the more adverse conditions of congestion, became impracticable in increasing degree with the improvement or removal of the congested conditions. The record does not show, and it would now be almost, if not quite, impossible, to ascertain, the percentage of cars upon which it was impossible, because of the various circumstances stated, to give the Detroit consignee a passing notice in time to permit his giving the carrier a reconsigning order. Had the giving of the passing notice been a condition precedent, which we have held it was not, to the assessment of a reconsigning charge, it clearly appears that it would have worked inequitably and would not have been free from discriminatory results. We are of the opinion that the failure of the carriers to make the assessment of the \$2 reconsigning charge conditional upon the giving of passing notice has not rendered such a charge unreasonable.

Considerable testimony was introduced respecting the circumstances attending the handling of the typical shipments involved in the complaint herein upon which reparation is sought. That testimony we have considered both in respect of its application to the question of the reasonableness of the reconsigning charges collected upon the particular shipments and in its relation to the general contentions of the complainant and interveners. It is our conclusion that the charges are not shown to have been unreasonable, and the prayer for reparation is therefore denied.

All the carriers respondent have considerable sums outstanding which they have been unable, or, acting under an erroneous interpretation of the tariff, have not endeavored to collect from the receivers of coal upon shipments of coal reconsigned. None of the carriers, however, has instituted actions looking to the collection of these charges except the Michigan Central Railroad, which, at the time of hearing, had filed suits against one or more of the coal receivers. These charges, we have held, were legal under the provisions of the tariff and, being not unreasonable, the law requires that they should be paid. The complaint will be dismissed.

No. 4952.
GEORGE R. WORN ET AL.
v.
BOCA & LOYALTON RAILROAD COMPANY ET AL.

Submitted June 25, 1915. Decided December 21, 1915.

Upon rehearing, finding in original report that complainants were entitled to reparation reversed and claim for reparation denied.

H. E. Willis for complainants.

A. P. Matthew for Boca & Loyalton Railroad Company.

G. D. Squires for Southern Pacific Company and Union Pacific Railroad Company.

REPORT OF THE COMMISSION UPON REHEARING.

McCHORD, *Chairman*:

In our original report, 32 I. C. C., 58, we found that the complainants were subjected to undue prejudice and disadvantage in that on shipments of lumber from Star, Cal., to Verdi, Nev., and other points, they were charged for that part of the transportation from Star to Boca, Cal., the junction point between the originating and delivering carrier, \$1.50 per ton, whereas contemporaneously shippers of lumber from Star to Truckee, Cal., were charged for a like service from Star to Boca only \$1 per ton; and we awarded reparation based on the difference in rate.

The case is now before us upon a petition for rehearing filed by the defendants, and we are asked to reconsider and reverse our finding as to reparation, upon the ground that the complainants have not shown themselves to have been actually damaged with respect to the specific shipments in issue.

Additional testimony has been taken, and upon a careful further consideration of all of the facts of record, as thus supplemented by the rehearing, we adhere to our previous finding that the rate situation involved was unduly prejudicial, but are constrained to reverse our finding as to reparation, because it now appears that as to the particular shipments on which reparation is claimed the complainants have not shown themselves to have suffered damage within the meaning of that term as defined by the Supreme Court of the United States in *Penna. R. R. Co. v. International Coal Co.*, 230 U. S., 184.

We therefore find that the complainants are not entitled to reparation on these shipments.

The rate situation complained of had been corrected prior to the original hearing and the order entered was only for reparation. In our order reopening the case the previous order was annulled and set aside.



No. 7684.

CATTLE RAISERS STOCKYARDS ASSOCIATION

v.

EL PASO & SOUTHWESTERN COMPANY ET AL

Submitted June 11, 1915. Decided December 21, 1915.

The complainant alleges undue preference by the defendants of the El Paso Union Stockyards Company of El Paso in the handling of cattle in that city. At the hearing an understanding was reached satisfactory to the complainant. The complaint is dismissed.

R. B. Daniel for complainants and Southwestern Stockyards Company, intervener.

Hawkins & Franklin for El Paso & Southwestern Railroad Company and El Paso & Northeastern Railroad Company.

R. S. Shapard for Texas & Pacific Railway Company.

Beall, Kemp & Nagle for Galveston, Harrisburg & San Antonio Railway Company.

W. W. Turney for Rio Grande, El Paso & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

McCHORD, Chairman:

El Paso, Tex., is an important market for stocker and feeder cattle. The cattle are brought in from the ranges to El Paso, there sold in the open market, and reshipped thence to other parts of the southwestern country to be fattened for slaughter. In the ordinary course of business the cattle are kept in the pens at El Paso awaiting sale an average of five or six days, during which time they must be fed, watered, and otherwise cared for. These services and those of unloading from the cars inbound and loading into cars outbound are performed by stockyards companies. Certain of these yards are

owned by the El Paso Union Stock Yards Company, hereinafter referred to as the Union Company, and are situated on a track operated jointly by the Texas & Pacific and El Paso & Northeastern railways, the latter being a part of the El Paso & Southwestern system. In addition to these yards there are three other yards in El Paso.

The complaint in this proceeding is brought by an association of cattle dealers in the southwest, which is now in process of incorporation. The complainant alleges that the defendants have entered into an exclusive contract with the Union Company under which all shipments of cattle consigned to and through El Paso are to be delivered by defendants to the yards of that company, and that the operation of such a contract will tend to create a monopoly in the handling of live stock at El Paso in the Union Company, eventually increase the price of handling cattle at El Paso, and subject the other yards in El Paso and the users thereof, including the complainant, to undue prejudice and disadvantage and give to the Union Company an undue preference and advantage. The stock of the Union Company is owned by parties actively associated with Morris & Company, packers, who are competitors of the complainant in the purchase of cattle, and it is alleged that an undue preference and advantage would also be conferred upon Morris & Company. The defendants showed upon the hearing that only the defendant Texas & Pacific Railway has entered into the contract mentioned, although the El Paso & Southwestern contemplates the execution of a similar contract in the near future. Copies of these contracts are filed in the record.

A petition of intervention has been filed on behalf of the Southwestern Stockyards Company, hereinafter referred to as the Southwestern Company. The yards of that company and those of the Union Company are situated on the same joint track and are in close proximity.

It was developed upon the hearing that the land on which the Southwestern Company's yards are situated was leased by that company from the carriers, joint owners of the track referred to; that upon expiration of the lease in April of this year the carriers declined, for reasons stated in detail in the record, to renew it; and that these yards are now being dismantled and the fixtures removed. It was further developed that the members of the Cattle Raisers Stockyards Association, the original complainant herein, contemplates the construction in the immediate future of yards on the joint track described directly opposite to those of the Union Company, and that all that the complainant really desires in the way of relief in this proceeding is that upon the completion of

those yards the defendants will, upon the request of the shipper, route his cattle through those yards on the same basis of allowances and absorptions to the new company as is now in effect between the defendants and the Union Company. The defendants state that this privilege, under the terms suggested, the complainant will have and that under the terms of the contract in question the only shipments that will be routed by the defendants exclusively through the Union Company's yards will be those as to which the shipper has not specifically designated routing to the contrary. With this arrangement the complainant expressed itself as being entirely satisfied.

The defendants explain in this connection, however, that this right of routing is not a new one accorded by them by reason of the pendency of this proceeding, but has, on the contrary, been available to the shipper heretofore under their tariffs.

The question of our jurisdiction has been raised and the El Paso & Southwestern has made a motion to dismiss. The point is further raised by the El Paso & Southwestern that even granting that we have jurisdiction over a contract of the nature referred to, no cause of action has been shown upon this record so far as its line is concerned, because that carrier, while contemplating the execution of such a contract, has not yet actually entered into it.

We deem it unnecessary to pass upon the question of jurisdiction. The cause of complaint has apparently been removed and the complaint will be dismissed.

It appears that this controversy is in large part the outgrowth of a dispute between certain of the cattle dealers and stockyards people of El Paso and the Union Company, originating at the time the latter company contemplated the erection of its yards in El Paso. This phase of the case and certain others arising in connection with the lease of land to the Southwestern Company referred to, fully explained in the record, we think it unnecessary to discuss in detail in this report.

An order will be entered in accordance with the foregoing conclusions.

No. 6750.¹

NATIONAL PETROLEUM ASSOCIATION

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted February 3, 1915. Decided December 23, 1915.

Upon complaints that defendants have collected, or seek to collect, charges based on rates higher than their published rates applicable to petroleum tallings in carloads shipped from oil refineries in the state of Kansas, and from an oil refinery at Vinita, in the state of Oklahoma, to East St. Louis, Granite City, and Chicago, Ill., East Chicago and Gary, Ind., and Racine and Milwaukee, Wis.; *Held*, That the published rates on petroleum tallings were lawfully applicable to the shipments involved and that refund of overcharges will be ordered on proper showing. Waiver of certain undercharges outstanding authorized.

C. D. Chamberlin for National Petroleum Association.

W. E. MacEwen for National Refining Company.

G. P. Boyle for Cudahy Refining Company.

J. S. Burchmore, L. M. Walter, and P. M. Hanson for National Enameling & Stamping Company.

D. N. Lewis, Thomas Watters, and A. D. Beals for Manhattan Oil Company.

A. B. Combs for Marshall Oil Company and Western Wholesale Jobbers Association.

G. E. Hutchinson for Central Commercial Company and Keystone Oil & Manufacturing Company.

H. F. Sundberg and Scott Collins for Cedar Rapids Oil Company.

Thomas White for Pierce Oil Corporation.

J. N. Davis and O. W. Dynes for Chicago, Milwaukee & St. Paul Railway Company.

Thomas Bond for St. Louis & San Francisco Railroad Company.

C. S. Burg for Missouri, Kansas & Texas Railway Company.

J. L. Coleman for Atchison, Topeka & Santa Fe Railway Company.

¹ The proceeding also embraces complaints in—No. 6750 (Sub-No. 1), Central Commercial Company et al. v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 6297, Milliken Refining Company v. Missouri, Kansas & Texas Railway Company et al.; No. 7142, Cudahy Refining Company v. Atchison Topeka & Santa Fe Railway Company et al.; and No. 7847, National Enameling & Stamping Company v. Atchison, Topeka & Santa Fe Railway Company et al.

W. F. Dickinson for Chicago, Rock Island & Pacific Railway Company.

H. G. Herbel and *F. G. Wright* for Missouri Pacific Railway Company.

A. P. Humburg for Illinois Central Railroad Company.

A. H. Lossow for Minneapolis, St. Paul & Sault Ste. Marie Railway Company and Canadian Pacific Railway Company.

J. F. Finerty for Great Northern Railway Company.

J. L. Minnis for Wabash Railroad Company.

Charles Donnelly for Northern Pacific Railway Company.

R. B. Scott for Chicago, Burlington & Quincy Railroad Company.

J. M. Souhy for Kansas City Southern Railway Company.

R. H. Widdicombe for Chicago & North Western Railway Company.

Winston, Payne, Strawn & Shaw for Chicago Great Western Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The issue presented on this record is, did the term "petroleum tailings," as used in the tariffs of the defendants, properly describe the shipments here under consideration, or did the shipments consist of fuel oil? Although billed by the complainants as petroleum tailings, the billing was changed by the carriers at destination and the increased rates applicable on fuel oil were assessed because an investigation by the inspectors of the defendants had disclosed that the shipments, as a matter of fact, were of a character which the defendants contend required the application of the fuel-oil rate.

The process used by the complainants in refining crude petroleum oil is that of dry distillation. When the crude oil is heated, the lighter oils, such as naphtha, gasoline, kerosene, and the gas oils, pass over the dome of the distilling tank in the form of vapors and are condensed by cooling processes. When this process of distillation has been completed and the lighter oils have been taken off, a residue, about 45 per cent of the crude oil, remains in the tank. This is susceptible of still further reduction by distillation into lubricants and various other products. Not all the refineries carry the refining process to the same extent; as we understand the record, even all the so-called lighter oils are not taken off by some of the refineries.

As contradistinguished from the lighter oils just mentioned, which are known as marketable oils, the product remaining in the tank after some or all of the lighter oils have been taken off is a dark colored, nontransparent, heavy, and oily substance which, regardless of the number of refining processes through which it has passed, is called by the complainants "petroleum tailings." It is known also as flux

oil, road oil, asphalt, tar, binder, black oil, grease oil, dust oil, and reduced oil, and, as a matter of fact, is used extensively also for fuel purposes. For the present we shall refer to this product as "residual oil." So far as this record indicates, the term "fuel oil" is applied in the trade to any oil that may be used in a furnace for heating metal or under a boiler for making steam. In rare cases fuel oil may be a distillate, but more frequently it is a residual product; in the latter case it may be refined or it may consist of the dregs of residuals. Oil used for fuel purposes may also be used to lay dust on streets or roads, to flux asphalt, and for a large number of other purposes.

The refineries of the complainants are at Vinita, in the state of Oklahoma, and at various points in the state of Kansas. Prior to 1905 a common rate applied from this territory on all petroleum products. In that year a lower rate was established on "asphalt" from Independence to St. Louis and East St. Louis, this product being represented by the shipper to be a heavy residual commodity, the principal use of which was in the manufacture of roofing and building paper. In 1910 the lower basis was made effective also from other Kansas points and the description was extended so as to include "asphalt, residuum, and road oil." The western classification in effect from May 1, 1911, to February 14, 1913, provided for fifth-class rates on "petroleum and petroleum products, including * * * residuum, tailings, * * * and oils, * * * fuel, * * * road." In the new classification, effective February 14, 1913, the word "residuum" was eliminated from the tariff and "tailings" and road oil were taken from the general list and included in separate items at class D ratings. In the supplement to this classification, effective August 5, 1913, the word "tailings" was amended so as to read "wax tailings."

The shipments of which complaint is here made all moved subsequent to March 1, 1913, and it is contended by the complainants that the rates properly applicable thereto were those published in western trunk line tariff, effective from December 1, 1912, to February 15, 1914, on "* * * petroleum tailings, * * * minimum weight 40,000 pounds, in tank cars, capacity of tank cars, * * * subject to estimated weight of 8 pounds per gallon." These rates are shown in the table below under the heading "petroleum tailings." In the same tariff the following item was in effect from December 1, 1912, until February 1, 1913:

Oil, petroleum and its products, classified fifth class under the head of petroleum in western classification, including petroleum road oil, petroleum tailings, and petroleum asphalt, minimum weight, 26,000 pounds; estimated weight, 7.4 pounds to the gallon.

On February 1, 1918, the above item was amended to read as follows:

Oil, petroleum and its products, including compounded petroleum oil and grease (but exclusive of sewing machine and cycle oils), classified fifth class under heading petroleum in western classification, in straight or mixed carloads.

The defendants assert that the rates properly applicable to the shipments in question were those applicable by virtue of the last-cited tariff provision, which rates are shown in the following table under the heading "fuel oil."

To—	Petro- leum tailings.	Fuel oil.
East St. Louis.....	12½	17
Chicago.....	18	27
Gary.....	18	28
East Chicago.....	18	28
Racine.....	18	28
Milwaukee.....	18	28

The complainants allege that the increase in the freight charges made at destination was unlawful because higher than the charges based on the published rates applicable to the commodity shipped, and also that the rates applicable to fuel oil were unreasonable. Some of the complainants have paid the higher charges demanded, while others have not; they ask that the defendants be required to observe their published rates applicable to petroleum tailings; that outstanding undercharge bills be canceled; and that the defendants be required to pay to the complainants such sums as they have collected in excess of the amounts that should have been collected based on the published rates. The defendants contend that there is a definite commodity known as tailings, and in support of this contention they introduced witnesses who testified that this commodity, sometimes referred to also as "wax tailings" and "still wax," is the last distillate to pass over the still when the crude oil is reduced to its final element, coke. It is a thick, cohesive, highly viscid, dark colored, semi or wholly solid substance at low temperature and finds its principal use in the manufacture of roofing paper and cement. It comprises only about one-half of 1 per cent of the crude oil, is valued at 8 cents a gallon, and can not be used for fuel purposes. None of the complainants carry the distilling process far enough to produce this commodity, which we shall hereinafter refer to as wax tailings. It differs materially from residual oil, which comprises 45 per cent of the crude oil, most of which is susceptible of use as fuel oil and is valued at about 2 cents a gallon.

The principal products of the complainants' refineries are the so-called marketable oils: that is, gasoline, naphtha, kerosene, and the

gas oils. In but one of the refineries is the process of distillation carried far enough to produce lubricants. The word "residuum," as used in western classification, was undoubtedly intended to apply on shipments of very low-grade petroleum products which could move only upon low rates. When this word was dropped from the western classification on February 14, 1913, and petroleum tailings was removed from the general list of petroleum products taking fifth-class rates and given the lower class D basis, this was undoubtedly done because the term "petroleum tailings" was thought better to define the commodity that theretofore had moved as residuum. When the words "petroleum tailings" were dropped from western classification and the words "wax tailings" substituted therefor, a similar change was not made in western trunk line tariffs. If the contention of the defendants be sustained it would result in the charging of materially higher rates on all residual low-grade oils shipped by the complainants and not named in the commodity tariffs.

Questions involving low-grade oils produced in the midcontinent fields have been considered by the Commission in numerous cases. In *Central Commercial Club v. A., T. & S. F. Ry. Co.*, 26 I. C. C., 373, 375, we said:

Residuum or road oil is the residue from crude petroleum, after the higher and more volatile oils have been extracted. It is used by pavers and roofers for fluxing solid asphalt, in road construction for dust-laying purposes, or as a binder for macadam roads, and for fuel purposes where high-grade oils can not be used on account of their cost. It is heavy, black, and nontransparent,
• • •

In *Rates on Asphalt and Asphaltum*, 26 I. C. C., 614, 615, we said that—

The terms petroleum asphaltum, petroleum tailings, and petroleum road oil appear to be interchangeable and to cover but one commodity, which is used in connection with other materials in the manufacture of roofing paper and also as a road oil. It appears that the articles intended to be covered by the rates in question are included under the terms retained in the tariffs and that the elimination of petroleum residuum, which is a more indefinite term and includes the three above stated, tends to remove the possibility of abuse. There would, therefore, appear to be no objection to its elimination.

In *Fairmount Creamery Co. v. A., T. & S. F. Ry. Co.*, 28 I. C. C., 661, 662, it was stated that—

The tendency of the Commission in recent cases has been to classify the various petroleum products to a limited extent and to establish lower rates on such low-grade products as fuel oil, road oil, etc., than are contemporaneously maintained on the higher grade of products, such as gasoline, kerosene, naphtha, etc.

There were introduced in evidence tariffs of various defendants wherein are shown descriptions of products of petroleum oil which are accorded low rates. From Casper, in the state of Wyoming, low

rates are made applicable to Chicago on "oil, fuel (residue, after the gasoline, kerosene, distillates, and gas oil have been extracted)." From Cincinnati to Atlanta low commodity rates apply on "oil, viz, road oil (petroleum tailings such as are used for dust preventives or road binder, and containing not less than 30 per cent asphalt)"; commodity rates to California terminals are made applicable to "asphalt, petroleum asphalt, petroleum crude oil, petroleum road, also petroleum fuel oil, viz, refinery residuum in tank cars"; from certain Kansas refinery points to Hastings, in the state of Nebraska, commodity rates apply on "petroleum residuum or road oil in tank cars." In western classification territory commodity rates generally have been applied to the residual products of crude petroleum.

The defendants contend, as heretofore stated, that fuel oil and tailings are not the same commodity; and that fuel oil, when named as such in a tariff and carrying a specific rate, can not, in order to obtain a lower transportation charge, be shipped under the designation tailings, which is also named in a tariff and carries a specific rate. These contentions, however, are based upon the erroneous assumption that there are commodities which are respectively fuel oil and tailings and nothing else. As a matter of fact no product of petroleum can be singled out as being fuel oil only. Any petroleum product that may be made liquid by steam and pumped from tank cars for burning or that can be used in a furnace for heating metal or under a boiler for making steam is a fuel oil. Oil sold for road purposes may be a fuel oil in the sense that it can be used also for fuel purposes; on the other hand oil sold for fuel oil may not infrequently be entirely suitable also for road and other purposes. The record shows that a car of this residual oil was shipped to the city of Owensboro, in the state of Kentucky, for road oil, and upon its arrival at destination was refused and later turned over to a customer at that place for fuel purposes. Another car containing this commodity was refused at Frankfort, in the state of Indiana, because the oil was "too thick," and was thereupon diverted to Plymouth, in the state of Michigan, to fill an order for a carload of "road oil." Fuel oil, therefore, is a generic term and does not describe the particular kind or character of oil; nor does the word tailings, as used in the tariffs of the defendants, define any particular kind of product or any ingredient or component part of the oil. It indicates only the place in the course of manufacture where it is found, and is no more definite than the term fuel oil. No line can be drawn between fuel oil and the residual products of complainants' refineries. No inspector could determine by an examination of the complainants' shipments whether the oil contained in them was fuel oil, road oil, flux oil, or tailings. The various oils look alike, are of the same consistency, and are produced by the same

method. If the use to which the tailings may be put defines what it is, then it would quite as often be road oil as fuel oil, or it might prove to be any one of the numerous other oils known to the trade and used for various purposes. It is now well settled by our decisions, and no other finding is practicable, that we can not undertake to determine whether a rate is reasonable or unreasonable by ascertaining to what use the product shipped is put, and the carriers must adjust their tariffs in conformity with that principle.

As the term petroleum tailings is used in the trade, it is comprehensive and generic and not specific. The record shows clearly that the billing was changed by the inspectors of the defendants when their investigation showed that the commodity was actually being used as fuel oil; where this was not the case, but the product was used as road oil or for other purposes, the tailings rate was applied, the billing being left unchanged. This in itself demonstrates the deficiency of the tariffs, in that the carriers themselves could not stand on the tariffs alone for the assessment of the proper charges, but were compelled to resort to an inquiry as to the use of the material that had been shipped. In other words, having ascertained the use to which the commodity was put, they then assessed the rate. The defendants do not contend that it was their purpose, by the use in their tariffs of the word "tailings," to raise the rates, from these Kansas and Oklahoma refineries, on all residual products not named in their commodity tariffs. Their practice under the tariffs did not disclose any such purpose. The residual products of the complainants, when billed as tailings, moved under the rates applicable thereto in cases where the shipments were not used as fuel oil. The character of the shipment was not changed, but its use determined the rates to be applied.

The descriptions in the defendants' tariffs of the products of petroleum oil to which various rates are applicable are not free from ambiguity. If wax tailings was the only product intended to be shipped under the term "tailings," the tariffs should so state. Words should be employed with clear and plain meaning, and language can be found to define in unmistakable terms what will be transported at specified rates. The exercise of due care by the carriers in the framing of their tariff descriptions would avoid controversies of this character. But the complainants herein are also not free from criticism. They have taken advantage of a technical situation in the tariffs to market upon a lower freight rate a commodity for which they had previously been unable to find a market upon a higher rate of freight. What the complainants shipped during the period in question as petroleum tailings they billed prior to that time as fuel oil; they took contracts calling for fuel oil and, while the shipments were invoiced to the consignees as such, they were billed

to the carriers as petroleum tailings. Other shippers, less skilled in the use of rate schedules, continued to ship their commodity as fuel oil and to pay the higher rate applicable thereto. The complainants therefore have had a rate advantage over them.

From all the evidence of record, we are of opinion and find that the commodity involved in these proceedings was lawfully billed by the complainants as petroleum tailings, and that the higher charges based on rates applicable to fuel oil were unlawful and must be refunded. We further find that the outstanding undercharges based on the same rates must be canceled and that the higher charges collected on other shipments must be refunded.

No orders fixing the amounts of reparation to be paid to the complainants can be issued upon the facts shown of record. But upon the filing by the complainants of statements, properly checked and verified by the defendants, showing the date of movement, the car numbers and initials, the route of movement from points of origin to destination, the weight of the shipments, the amount of freight charges paid, and the amount of refund claimed, the matter of issuing proper orders will have consideration.

ST L. C. C.

No. 6295.

MILLIKEN REFINING COMPANY

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY.

Submitted February 3, 1915. Decided December 23, 1915.

Rate of 29 cents per 100 pounds for the transportation of refined petroleum and its products in carloads from Vinita, Okla., to Windsor, Mo., found to have been unreasonable to the extent that it exceeded 17 cents. Reparation awarded.

C. D. Chamberlin for complainant.

C. S. Burg for defendant.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The complainant alleges here that the rate of 29 cents per 100 pounds applied by the defendant for the transportation of carload shipments of petroleum and its products from Vinita, in the state of Oklahoma, to Windsor, in the state of Missouri, was unreasonable, unjustly discriminatory, and in violation of the fourth section of the act. In the complaint, which was filed on October 30, 1913, reparation is asked on shipments made between March 1 and September 10 of that year. At the hearing, however, reparation was asked on shipments moving as late as January 17, 1914.

In *Milliken Refining Co. v. M., K. & T. Ry. Co.* (Sub-No. 1), reported in *Milliken Refining Co. v. St. L. & S. F. R. R. Co.*, 27 I. C. C., 445, the Commission held that a rate of 24 cents on refined petroleum from Vinita to Sedalia, which is also in the state of Missouri, was unreasonable and a rate of 17 cents per 100 pounds was prescribed as the maximum rate for the future. No reparation was there asked and none was awarded. The new rate became effective on September 1, 1913. Windsor is intermediate to Sedalia on shipments moving over the defendant's line from Vinita, and on May 10, 1914, the rate to Windsor was also reduced to 17 cents.

In its amended answer the defendant admits that the 29-cent rate to Windsor was unreasonable as to shipments forwarded to Windsor after the 17-cent rate to Sedalia became effective, and with respect to such shipments it expresses a willingness to make reparation.

Upon the facts appearing of record, we are of the opinion and find that the rate applied after September 1, 1913, was unreasonable to the extent that it exceeded 17 cents per 100 pounds; that the complainant

made shipments after that date and bore the charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges collected and the charges which would have accrued at the rate herein found reasonable; and that it is entitled to reparation on that basis on all shipments moving after the date last mentioned, and to reparation on the basis of 5 cents per 100 pounds, being the difference between the intermediate rate of 29 cents and the lower rate of 24 cents to Sedalia on all shipments moving prior to September 1, 1913, and after March 1 of the same year.

Upon receipt of a statement properly checked and verified by defendant and showing as to each shipment on which reparation is claimed the date of movement, point of origin, point of destination, route, weight, car number and initials, rate applied, charges collected, and the amount of reparation due under our finding herein, we will consider the matter further with a view to issuing an order awarding reparation.

In *Midcontinent Oil Rates*, 36 I. C. C., 109, the Commission found that a reasonable rate on refined oil from Vinita to Sedalia should not exceed 20 cents. In view of this action no order for the future is deemed necessary in this proceeding.

37 I. C. C.

No. 6987.¹
PUBLIC SERVICE COMMISSION OF THE STATE OF
MISSOURI ET AL.

v.
WABASH RAILROAD COMPANY ET AL.

Submitted February 6, 1915. Decided December 24, 1915.

Rates for the transportation of apples in carloads from points in a producing region in the valley of the Missouri River, lying for the most part between Omaha, in the state of Nebraska, and Kansas City, in the state of Missouri, to various points north, east, and southeast, with the exception of rates to Sioux City, Iowa, found not to be unreasonable or unjustly discriminatory; except that the rates to that station are found to be unjustly discriminatory.

***J. H. Henderson* for Board of Railroad Commissioners of the State of Iowa.**

***H. T. Clark, jr.*, for Nebraska State Railway Commission.**

***A. E. Helm* and *J. M. Kinkel* for Kansas Public Utilities Commission.**

***C. B. Bee* for Public Service Commission of the State of Missouri.**

***C. E. Childe* for Traffic Bureau of Sioux City Commercial Club.**

***R. B. Scott* for Chicago, Burlington & Quincy Railroad Company; Great Northern Railway Company; and Northern Pacific Railway Company.**

***H. G. Herbel* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.**

***W. F. Dickinson* and *W. T. Hughes* for Chicago, Rock Island & Pacific Railway Company.**

***C. C. Wright* for Chicago & North Western Railway Company and Chicago, St. Paul, Minneapolis & Omaha Railway Company.**

***W. A. Northcutt* and *C. D. Boyd* for Louisville & Nashville Railroad Company.**

***F. H. Behring* for Southern Railway Company.**

***J. G. Morrison* for Chicago Great Western Railroad Company.**

***J. M. Simon* for Vandalia Railroad Company; Pennsylvania Company; and Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.**

The proceeding also embraces complaints in—No. 6988, Same v. Wabash Railroad Company et al.; No. 6989, Same v. Wabash Railroad Company et al.; and No. 7254, Traffic Bureau of the Sioux City Commercial Club v. Chicago Burlington & Quincy Railroad Company et al.

Charles Donnelly for Northern Pacific Railway Company.
C. A. Kelly for Chicago & Alton Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

In these complaints allegations of unreasonableness and unjust discrimination are made with respect to the rates charged by the defendant carriers for the transportation of apples in carloads from a producing region embracing about 20 counties in the states of Iowa, Kansas, Missouri, and Nebraska, situated in the valley of the Missouri River and lying for the most part between Omaha and Kansas City, to destinations in the Dakotas, Minnesota, Wisconsin, Ohio, Indiana, Illinois, Kentucky, Tennessee, Georgia, and Alabama. The rates are alleged to be unreasonable and discriminatory as compared with the rates on other perishable commodities of greater value handled under similar or even less favorable transportation conditions; it is also alleged that the rates are unduly preferential in favor of competing producing sections. In the western and official classifications apples take fifth-class rates and in the southern classification sixth-class rates. The complainants ask that commodity rates lower than the class rates be established and that this producing region be placed within one group or blanket. The commercial clubs of Kansas City and Sioux City intervened, the latter alleging that the rates to Sioux City from certain interstate points in the producing region above referred to are unreasonable and unjustly discriminatory as compared with rates from other near-by points in the same region and as compared also with rates to Omaha and Lincoln, both in the state of Nebraska.

Council Bluffs may be taken as a typical shipping point, and the following table shows its rates, distances, etc., to representative points of destination in the states above mentioned:

From Council Bluffs to -	Distance	Rate.	Earnings per ton-mile.	Earnings per car on basis of minimum weight of 24,000 pounds.	Earnings per car-mile.
	Miles.	Cents.	Mills.		Cents.
Atlanta, Ga.	1,050	60.0	11.8	\$144.00	14.4
Birmingham, Ala.	886	53.0	12.0	127.20	14.4
Memphis, Tenn.	675	29.0	8.6	69.60	10.7
Nashville, Tenn.	735	40.0	10.9	96.00	13.1
East St. Louis, Ill.	685	37.0	10.8	88.80	13.0
Chicago, Ill.	704	37.0	10.5	88.80	12.6
Indianapolis, Ind.	765	35.5	11.9	85.20	14.3
Springfield, Mo.	475	21.5	11.3	58.80	13.8
Chattanooga, Tenn.	485	27.0	11.1	64.80	13.6
Greenville, S. C.	694	27.0	8.8	64.80	10.6
Mobile, Ala.	12	27.0	15.8	64.80	19.9
Albany, Ga.	97	3.6	19.4	85.44	22.3
Birmingham, Ala.	777	68.0	17.5	163.20	21.0

There were offered in evidence also numerous rate comparisons showing the rate adjustment from various apple-producing sections to common markets, all of which have been carefully considered. The following table, introduced by complainants, shows the rates to Atlanta from Council Bluffs and various other producing sections:

To Atlanta, Ga., from—	Distance.	Rate.	Earnings per ton-mile.	Earnings per car.	Earnings per car-mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>		<i>Cents.</i>
Council Bluffs, Iowa.....	1,020	60	11.8	\$144.00	14.1
Albany, N. Y.....	1,021	42	8.2	100.80	9.9
Buffalo, N. Y.....	934	47	10.1	112.80	12.1
Concord, N. H.....	1,188	42	7.1	100.80	8.5
Grand Rapids, Mich.....	798	51	12.8	122.40	15.4
Syracuse, N. Y.....	1,082	42	7.8	100.80	9.82

No effort was made, however, to show that the conditions surrounding the movement of traffic from these producing points were similar to those obtaining in connection with traffic from the Missouri Valley points; on the contrary, it was admitted by complainants that the conditions are dissimilar. Nevertheless, they contend that the dissimilarity does not justify such substantial differences in rates. There were also introduced exhibits showing the proportional commodity rates on various articles from Missouri River common points to Cairo and the percentages they bear to the class rates which, in the absence of commodity rates, would apply on apples from the Ozark region in Missouri and Arkansas to southeastern points. These rates, which are based on the aggregate of the intermediate rates to and from Memphis, were, in *Ozark Fruit Growers Asso. v. St. L. & S. F. R. R. Co.*, 16 I. C. C., 134, held not to be unreasonable. The carriers in *Advances in Rates by Carriers for the Transportation of Apples in Carloads*, 24 I. C. C., 38, were endeavoring to withdraw commodity rates on apples from southwestern Missouri points to Minneapolis, St. Paul, and other cities in that vicinity, and to establish the fifth-class rates; and our order in that proceeding permitted this to be done. In other cases also we have sustained the application of the class rates on apples. Although the present minimum weight is 24,000 pounds and apples can be loaded as high as 32,000 pounds, the average loading from this territory is 26,000 or 27,000 pounds. The complainants are willing to accept an increase in the minimum weight to 28,000 pounds.

According to government statistics for 1909 there were devoted to apple growing in this region 58,233 acres of land. The trees numbered 4,663,461 and the production amounted to 4,350,830 bushels. Of the several thousand cars shipped annually, the majority are consigned to dealers and commission merchants at Chicago, St. Louis,

Kansas City, and Minneapolis, from which points the apples are distributed through the northeast and southeast. Comparatively few shipments move directly from the producing regions to points beyond the cities just named. In the east and southeast, where the competition of the Michigan, New York, and New Hampshire producing sections is met, the complainants are at a disadvantage in freight charges of from \$5 to \$50 per car, and this disadvantage the Commission is asked to remove. The record indicates that where the freight rate permits the apples grown in this section are of such quality as to enable them to be marketed in competition with the fruit from any section of the country. But, generally speaking, apple growing in this region has not been profitable, and one of the causes of the difficulty is alleged to be the excessive freight charges. The record shows, however, that many growers who prune, spray, and otherwise care for their orchards and who properly pack their fruit are doing a profitable business. It is also shown that dealers at Chicago and St. Louis, after purchasing the fruit from the producing region in question, can and do ship it to the identical points to which the complainants are now asking reductions in rates.

The carriers resist a reduction in the rates simply to meet the commercial needs of the complainants; they claim that their present rates are reasonable and nondiscriminatory and point out that apples generally are not accorded less than class rates and that of all fruits pears and apples alone are ordinarily classified as low as fifth class. They further contend that they are not responsible for the relatively lower rates applied from other apple-producing sections. And these contentions are supported by the evidence adduced of record. A careful examination of all the facts shown of record has convinced us that the rates here under attack are neither unreasonable nor unjustly discriminatory. The three complaints in which they are challenged must therefore be dismissed, and it will be so ordered.

The second issue arises on the complaint of the Sioux City Commercial Club. There was formerly applied on apples to Sioux City from certain of the producing points in Missouri, Kansas, and southeastern Nebraska a commodity rate of 17½ cents. This rate in so far as it was applicable from Kansas City, St. Joseph, Atchison, Leavenworth, and intermediate points was canceled as to certain routes on December 22, 1912, and as to others on December 10, 1913. Since that time there has been applicable from Kansas City, St. Joseph, and certain intermediate points in Missouri the fifth-class rate of 24.4 cents, and from Atchison, Leavenworth, and certain intermediate points in Kansas the class B rate of 19½ cents. From certain stations in Kansas on the line of the St. Joseph & Grand Island Railway the

commodity rate of 17½ cents to Sioux City remained in effect until February 25, 1915, when it was canceled, and class B rates were made to apply, resulting in increases of from 3 cents to 5 cents per 100 pounds over the rates formerly in effect. From a number of producing points in Kansas to Lincoln and Omaha there are applied the class B rates; the latter are generally lower than the fifth-class rates. There are still some commodity rates maintained on apples in this general territory and some departures from the long-and-short-haul clause exist; the complaint arises out of these inequalities. On December 14, 1914, the carriers, in an endeavor to put all the apple rates in this territory on the fifth-class basis, sought to cancel the class B basis originally published. As the tariff contained other changes also it was suspended in its entirety and has recently been considered in *1915 Western Rate Advance Case—Part II*, 37 I. C. C., 114, 160. The proposed increased rates on apples have been permitted to go into effect and most of the inequalities and disparities, of which complaint is here made, will thus be removed. It was because the question was somewhat involved in the case just cited that the disposition of this proceeding has been delayed.

A consideration of the whole record leads us to the conclusion, and we so find, that the present rates to Sioux City are not unreasonable, in and of themselves, but that the maintenance by the defendants to that city from the points named in the complaint of rates relatively higher than those maintained by them from contiguous points, which are accorded class B or commodity rates, is unduly preferential of the latter points. We also find that the maintenance by the defendants to Sioux City, from the producing points named in the petition, of rates relatively higher than are contemporaneously applied by them from the same points to Omaha and Lincoln subjects Sioux City to undue prejudice and disadvantage which the defendants will be expected to remove on or before February 15, 1916. The record will be held open for the entry of such further orders as may be necessary. No injury or damage is shown to have resulted from the discrimination here found to exist and no reparation will be awarded.

INVESTIGATION AND SUSPENSION DOCKET No. 615.
RATES VIA RAIL-AND-LAKE ROUTES.

Submitted December 1, 1915. Decided December 30, 1915.

Proposed increased class and commodity rates via rail-and-lake, lake-and-rail, and rail-lake-and-rail routes between points in the New England and the middle Atlantic states, and the west, found not to have been justified. Tariffs required to be canceled.

O. E. Butterfield, G. F. Brownell, G. S. Patterson, F. L. Ballard, T. H. Burgess, Douglas Swift, R. W. Barrett, T. W. Reath, and R. Walton Moore for respondents.

Cassoday, Butler, Lamb & Foster, R. C. Butler, and K. D. Loe for Chicago Association of Commerce.

Jeffery & Campbell for Board of Trade of Chicago.

Martin Van Persyn for Wholesale Grocers' Exchange of Chicago, and Sprague, Warner & Company.

G. R. Hall for Commercial Club of Duluth.

E. J. McVann for Commercial Club of Omaha.

T. A. McGrath for Minneapolis Civic & Commerce Association.

G. A. Schroeder for Chamber of Commerce of Milwaukee.

F. E. Williamson for Buffalo Chamber of Commerce.

J. H. Henderson for Board of Railroad Commissioners of Iowa, Clinton Sugar Refining Company, and J. C. Hubinger Brothers Company.

W. H. Chandler for Boston Chamber of Commerce and Merchants Association of New York.

W. J. Tomkins for Cleveland Salt Company, Union Salt Company, Diamond Crystal Salt Company, Michigan Salt Works, and Mulkey Salt Company.

Frank Barry for Merchants & Manufacturers Association, Milwaukee, Wis.

W. B. Martin for Traffic Association of the upper Mississippi River cities, Dubuque to Keokuk, inclusive.

REPORT OF THE COMMISSION.

McHORD, Chairman:

By tariffs suspended until January 25, 1916, the respondents herein propose increases in the class and commodity rates applicable via the so-called lake routes to and from trunk line and New England territories, from and to points, generally speaking, west of the Illinois

Indiana state line. The routes involved include a boat haul on the great lakes performed by one of the several lake lines operating thereon as follows: Canada-Atlantic Transit Company, Cleveland & Buffalo Transit Company, Detroit & Cleveland Navigation Company, Erie Railroad Lake Line, Lackawanna Transportation Line, Lehigh Valley Transportation Company, Mutual Transit Company, Port Huron & Duluth Steamship Company, Rutland Transit Company, Erie & Western Transportation Company, and Western Transit Company.

With the exception of the Cleveland & Buffalo Transit Company, Lackawanna Transportation Line, Port Huron & Duluth Steamship Company, and the Detroit & Cleveland Navigation Company, these lake lines are owned and controlled by certain of the rail carriers which operate or have a voice in the control of competing all-rail routes. *Lake Line Applications under Panama Canal Act*, 33 I. C. C., 699. The four lines mentioned, however, together with the railroad owned lines, are members of the Association of Lake Lines, which, as described in *Lake Line Applications under Panama Canal Act*, *supra*, page 709, exercises a dominating influence over its members favorable to the interests of the railroads owning lake lines.

In *The Five Per Cent Case*, 31 I. C. C., 351, 32 I. C. C., 325, certain increases were permitted in the rates applicable via the competing all-rail routes. The increases here proposed seek to maintain the relation which prior to the increase in the all-rail rates existed between such rates and the lake-and-rail rates. The differentials which existed between the lake-and-rail rates and the all-rail rates prior to the increases, as above stated, together with the present all-rail rates, in cents per 100 pounds, are shown in the following table for the six classes:

✓ 1/11
7/3

Since the all-rail rates, which were increased 5 per cent, are somewhat higher than the lake-and-rail rates, the increases in said rates here proposed, raising them to the differential basis formerly existing, are usually somewhat in excess of 5 per cent.

The respondents contend that the financial need on the part of the lake lines is equal in severity to the financial need of the rail lines as shown in *The Five Per Cent Case*, *supra*, and in addition that the forces of competition which are likely to be found irresistible threaten the stability of the all-rail increases permitted in said case, and that to avoid the effects of this competition they should be permitted to

increase their lake-and-rail rates sufficiently to restore the differentials formerly existing. The protestants argue in reply that the financial condition of the lake lines is not due to need of increased rates, but rather is a financial condition necessarily resulting from the ownership and control of the lake package boats by the railroads, with which the railroads do or may compete, and that further they are entitled to the benefit of the competitive influences of the natural waterway furnished by the lakes which has been artificially improved by the government at great expense.

The fleets of the 10 operating companies comprised in the season of 1915 some 69 vessels, all known as package freight boats. The statement appearing in the appendix as Exhibit 1 shows the pertinent facts disclosed by the record herein with reference to the marine equipment of these lines, the ports between which their vessels ply, and the rail connections with which they maintain through traffic arrangements. The statement appearing in the appendix as Exhibit 2 shows the various routes, either all rail, rail and lake, differential rail and lake, and water and rail, giving the respective class rates from New York City, Philadelphia, Pa., Baltimore, Md., and Boston, Mass., as of May 1, 1915, to Chicago and elsewhere in the west. The differential rail-and-lake rates are said to be such on account of the longer haul, inadequate facilities, necessity of water haul, or other disadvantages. Some concession in rate is therefore necessary it is said in order to attract the tonnage over such less desirable routes. As will be noticed, the water-and-rail routes employ a route where part of the transportation is performed by an ocean haul. The statement appearing in the appendix as Exhibit 3 shows, for the period 1900 to date, the past and present class rates over these different routes from the four coast cities named to Chicago, Ill., and St. Louis, Mo., with the resulting differentials.

These lake lines in connection with rail carriers handle traffic other than via the routes already described. Particular mention may be made of the movement of iron and steel articles from Pittsburgh, Pa., and what is known as the valley territory contiguous to Pittsburgh, through the ports of Erie, Pa., and Cleveland, Ohio, to upper Lake Michigan and Lake Superior ports and beyond. Some increases in rates via these routes to and from central freight association territory were recently made following the decisions of the Commission in *The Five Per Cent Case, supra*.

Practically the same issues as here involved were raised in *The Five Per Cent Case, supra*. In the first decision, 31 I. C. C., 351, at pages 404-405, it is said:

It was apparent upon the argument and from the testimony of witnesses for the carriers that the purpose in proposing to increase the rates over the

rail-and-lake routes in official classification territory was to retain or preserve existing relationships between those routes and the all-rail routes. Moreover, there was no substantial effort to justify the increases in those rates on any other ground, except as to some increases in costs at certain terminals because of an extension of the service performed without an increase in the charge. On the other hand, a very substantial showing was made by Chicago and Duluth shipping interests against any increase. Upon the whole record we find that the carriers have not met the burden of justifying their proposed increased lake-and-rail rates. On general grounds, also, those increases must necessarily fall with the fall of the increases in the all-rail rates. The carriers that have published such rates will therefore be required to cancel them, except in so far as any increase here approved in central freight association rates may require under established bases some increase in the rail-and-lake rates or in the factors upon which those rates are based.

In the second decision, 32 I. C. C., 325, the Commission, again denying the increases, said, at page 331:

Rail-lake-and-rail, lake-and-rail, and rail-and-lake rates. It is shown on the record that since the rail carriers acquired ownership and control of the lake lines successive increases have been made in the rates via lake, tending to lessen the differences between them and the all-rail rates.

No really new contentions are advanced by the respondents here; rather, they seek to reiterate those made in *The Five Per Cent Case*, *supra*.

FINANCIAL NEEDS OF THE LAKE LINES.

In support of their contention that the financial needs of these package boat lines justifies the proposed increase of more than 5 per cent in the rates here involved, the respondents point to the comparative financial results of operation from the years 1905 to 1914, separately and combined, for seven of the lines here involved, as follows: Canada-Atlantic Transit Company, Erie Railroad Lake Line, Lehigh Valley Transportation Company, Mutual Transit Company, Rutland Transit Company, Erie & Western Transportation Company, and Western Transit Company. See appendix, Exhibit 4.

From this it would appear that for the 10-year period the combined net operating gain or deficit for the seven lines was:

1905 (gain)	\$234, 650
1906 (gain)	423, 218
1907 (gain)	382, 676
1908 (gain)	103, 171
1909 (deficit)	49, 515
1910 (gain)	1, 361
1911 (deficit)	132, 011
1912 (deficit)	95, 060
1913 (deficit)	101, 452
1914 (deficit)	383, 750

Not an encouraging showing standing alone, it may be said, but, on the other hand, a result not to be considered alone, but rather in the light of all the conditions surrounding the ownership and operation of these lake lines by competing rail carriers. *Lake Line Applications under Panama Canal Act, supra*, at page 711.

The control by important trunk line railroads of their principal railroad connections in central freight association territory had been quite generally acquired by the year 1900. By that year also the same trunk line interests had secured substantial control of the competing package boats on the lakes. Practically complete control of the lake lines was reached in 1907, when the Mutual Transit Company took over the lake package route theretofore operated by a subsidiary of the Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

Operating revenues are the result of the application of rates and the divisions thereof to the tonnage transported. It is therefore proper to consider each of these factors.

Rates and divisions.—For some 23 years prior to the control of these lake package routes by the trunk line railroads the standard rail-and-lake rates from New York to Chicago were on a scale of 54 cents per 100 pounds first class. In 1901, with the railroad control of lake package routes approaching practical completion, came an increase to a scale of 59 cents, and with the ultimate completion of the control in 1907 came two additional increases, resulting in a westbound scale then and since of 62 cents. True, it is asserted that the 1907 increases were made to cover the cost of marine insurance then assumed and since borne by the lake lines on westbound class traffic, but the assertion was not supported by proof when the question was raised in *Wyman, Partridge & Co. v. Boston & Maine R. R.*, 13 I. C. C., 258, and it is not so supported here. All these changes in the important class rates are indicated by the statements in the appendix, Exhibit 3, and it may be noted that the net result of the changes in 1907 was a decrease of one-half cent per 100 pounds in sixth class, while fifth class remained unchanged. In 1900 the rates on sugar and coffee from New York to Chicago, rail and lake, were each 23 cents per 100 pounds; all rail they were 30 cents. In 1901, practically with the opening of lake navigation, the rail-and-lake rate became 25 cents, while the all-rail rate remained at 30 cents. There were many changes, some of them quite large, in these rates via both routes until at the opening of lake navigation in 1907 the rail-and-lake rates were 23½ cents on sugar and 22½ cents on coffee. In 1908 these rates were increased to 25 cents, and in 1909 that on sugar was reduced to 23 cents. Before the increases following *The Fire Per Cent Case, supra*, sugar moved all rail at 26 cents and coffee at 30

cents. Since that decision the rates have been 27.3 cents and 31½ cents, respectively.

Eastbound the class rates from Chicago to New York lake and rail have remained on a scale of 63 cents, first class, since 1898. Theretofore the scale basis was 60 cents. Such rates do not include insurance. Prior to the absorption of the lake lines by the rail carriers, the rail-lake-and-rail rates on flour had fluctuated considerably, but, in general, the rail-lake-and-rail rate was a well understood and established differential of 5 cents per 100 pounds under the all-rail rate. Early in 1898, after the railroads had secured control of most of the lake lines, that differential was narrowed to 3 cents by increasing the rail-lake-and-rail rate, and in April, 1902, after the railroads had completed their control of the lake lines, it was narrowed to 2 cents by another increase in the rail-lake-and-rail rate. *Jennison Co. v. G. N. Ry. Co.*, 18 I. C. C., 113, at 115-116. The recent increase in the all-rail rate in *The Five Per Cent Case*, *supra*, has increased the differential to 2.8 cents.

It is clear on this record that the lake lines have practically no voice in the naming of the rates, certainly of the westbound rates. The prime consideration in fixing them seems to be the maintenance of a differential relation determined by the rail lines. The question of revenue is apparently secondary. It is of record in this respect that the rail carriers in their control of these package boats sought in 1910 to go beyond their changes of 1907, shown in the appendix, Exhibit 3, and reduce the differential basis to 5 cents, first class. This, however, was thwarted by a foreign carrier. *Lake Line Applications under Panama Canal Act*, *supra*, at page 714. It may be fairly said that the policy of these rail carriers seems to have been to name rates via the lake routes that in fact discourage the traffic. Not only that, but the lake lines have refused to handle certain high-class traffic of which a large tonnage is available. *Lake-and-rail Butter and Egg Rates*, 29 I. C. C., 45. Whatever may be their real attitude toward the maintenance of the differential relation, it is apparent that that relation was disturbed by the lake route increases in 1901 and 1907, and would again have been disturbed had the proposed 1910 increase gone through. Furthermore, the so-called "fixed relation" seems to have come only with railroad control of the lake lines.

Equally apparent it is that the lake lines have practically no voice in naming divisions of the rates. What voice they have, when any at all, is usually that of an official who occupies a dual traffic capacity for the railroad and its controlled lake line. The rail carriers generally demand as their proportion of lake route rates the same absolute amount which they receive out of the competitive all-rail rates, although there are exceptions, naturally, to the rule. See *Lake Line*

Applications under Panama Canal Act, 37 I. C. C., 77. When the all-rail rates were increased, following the decisions in *The Five Per Cent Case, supra*, the carriers east of Buffalo naturally received an increase in their division of such rates. Thereupon, notwithstanding the denial of the increased rates via the lake routes in the same proceeding, these trunk line railroads took as their share of the lake route rates the increased division earned out of the all-rail rates. The rail carriers operating from the lake ports west have demanded increases in their divisions for the same reason, and the effect has been to shrink the revenues of the lake lines to a considerable extent. On flour and grain products alone the loss to the lake lines due to these readjustments of divisions in the season of 1915 will be in the neighborhood of \$250,000, based on the tonnage of the previous season.

Another instance of the manner in which these lake lines seem not to get appropriate divisions is incident to the rates from New York, Philadelphia, and Baltimore, rail and lake, to the west. Taking Chicago as a typical destination, the Philadelphia first-class rate is 6 cents and the Baltimore first-class rate 8 cents under New York. See appendix, Exhibit 3. The different service from Philadelphia and Baltimore is entirely in the rail haul to the lake port. Nevertheless, of the cuts of 6 and 8 cents under New York only 0.4 of 1 cent is borne by the rail lines, and the balance is borne by the lake lines.

It may be well at this point to say that the central freight association lines and lake package boats not under railroad control, such as the Detroit & Cleveland Navigation Company, divide their joint rates upon a mileage prorating basis. And for use where no joint rates are named in connection with this lake line these same central freight association lines publish proportionals, lower than their locals, for the haul to the port of connection. But a different arrangement obtains where the lake line is railroad controlled. In such event the rail carrier demands as its division its full local rate to the port, even where, because it observes the rate from Baltimore as maximum, the joint rate is less than the combination of locals. It is said that this is warranted because the central freight association lines must short haul themselves in delivering this traffic to the lake route. This, however, does not justify the different treatment accorded the controlled boat from that accorded the independent boat with an independent traffic official protecting its divisional interests.

The foregoing illustrates the effect on lake line rates and divisions of the control by the trunk lines. The second factor in the operating revenue, that of tonnage, will be discussed.

Tonnage.—Appendix, Exhibit 5, shows comparatively for the years 1903–1914 certain statistics of tonnage movement by the vessels of the same seven lines of which the financial statistics appear in appendix, Exhibit 4. For the year 1914 there is shown in more detail the tonnage statistics of these same lines except the Canada Atlantic Transit Company. It will be observed that over the term of years these lake lines show no regular increase year by year in tonnage handled. As compared with 1903, the year 1914 shows an increase of about 25 per cent in the aggregate. But if we adopt 1905 as the basis of comparison, then 1914 shows a decrease of almost 10 per cent, whereas 1913 is an increase over either 1903 or 1905, and runs quite evenly with 1907, 1909, and 1910. The percentage of package freight is increasing, but the class of that freight is not a matter of statistical record year by year, and protestants insist there is more in the lower classes now than formerly. As evidence of this one large house is named as having diverted from lake to rail and ocean and rail an annual freight of some 20,000 tons whereon the rating would average high.

Westbound, there is a large movement of classified tonnage, mostly, it appears, under the lower class rates. The commodity rates on sugar and, to a lesser extent, on coffee, also carry a considerable tonnage to the west. From Pittsburgh and the territory thereabouts the shipments over the lakes are largely of iron and steel articles to the northwest. Eastbound, flour and grain products comprised fully 88 per cent of all freight in the season of 1913, the class rates, mostly fifth and sixth class, moved something less than 10 per cent, and there may be noted other traffic in copper, wool, and shingles. Grain in bulk is also taken, but only as a last resort.

This record does not lack in expert opinion, on behalf of the carriers as well as of the shippers, that the tonnage and revenues of the lake lines would increase under a lower scale of lake rates. This is the result of the very vital relation between tonnage and differentials. The greater the differential the greater the tonnage over the lakes. In the past the lake movement has fallen off as differentials have been narrowed. Not only that, but the higher class tonnage has fallen off more rapidly. During the years 1896 to 1900, when the differential on flour and grain products was greater than since 1907, *ante*, page 307, the flour movement over the lakes to Buffalo averaged about 11,000,000 barrels per year; in 1911, with the differential in favor of the lake route only 2 cents, the movement had decreased to about 7,000,000 barrels. It is affirmatively stated that one large miller in Minneapolis, Minn., now ships via the all-rail routes every pound of his product which goes east. The carriers have endeavored to explain this decrease in the flour tonnage by pointing to the increase in

the milling of flour in Buffalo. *Jennison Co. v. G. N. Ry. Co.*, *supra*, at page 116. On this point, however, the record in its entirety indicates that the really potent factor in the decreased tonnage is the decreased differential.

Operating revenues.—From the foregoing it appears that during the years of dominating control of the lake routes by the rail carriers there have been (1) an upward tendency in the package rates via the lakes; (2) a domination of divisional arrangements by the controlling rail interests; (3) a narrowing of the differentials in lake rates under all rail; (4) a rate parity with ocean-and-rail routes; (5) a falling off in high-class tonnage over the lakes; and (6) an aggregate tonnage movement which shows no progressive growth. The financial showing is very naturally unfavorable. The investment and freight revenue accounts have remained practically stationary, but during these same years the rail competitors of these boat lines have experienced far different conditions. With them investment, traffic density, and gross revenues have increased greatly, even while the average revenue per unit of tonnage was decreasing. *The Five Per Cent Case*, *supra*. Meanwhile on the great lakes the bulk freighters, their tonnage capacity, and the gross tonnage they have transported have greatly increased, while their average rate on particular commodities and their average rate of return per unit of traffic handled has decreased. It may be fairly assumed that the history of the rail carriers and the bulk freighters reflects the general increase in business in the territory which they serve, and it may be fairly asked why these package carriers have not also shared in the great growth of the traffic. It is impossible to escape the conclusion that the business of the package boats has been artificially kept at a practical standstill by a policy of unattractive rates and differentials, imposed upon them by their rail competitors, to whose control they have been subject.

Operating expenses, taxes, and rentals.—These operating costs, as will appear from the comparative tables shown in appendix, Exhibit 4, have increased somewhat in the past 10 years. It was not until 1907, however, when the boats of the Minneapolis, St. Paul & Sault Ste. Marie Railway Company were taken over by the Mutual Transit Company, that the operations of these lines reached substantially the present limits. It is therefore proper to use 1907 as the basis for comparison. Particularly is the comparison fair, because from the standpoint of tonnage, that was the banner year of these lake lines.

It appears from appendix, Exhibit 4, that in 1913 operating expenses increased 10 per cent over 1907, but in 1914 the increase was only about 1½ per cent over 1907. This by no means approximates the increase in railroad operating expenses shown in *The Five Per*

Cent Case, supra. Taxes have remained almost stationary. Rents went up from \$97,791.86 in 1907 to \$175,622.39 in 1913, but decreased to \$145,851.13 in 1914, and the only really extraordinary change in this account was with the Erie & Western Transportation Company.

The testimony before us is to the effect that wages have increased and the cost of supplies has increased, and instances of such increases are cited. But, even so, the increase in the operating expense account as a whole is the result of all such individual increases; and, as already indicated, that shows no alarming tendency. The railroads pay out annually for maintenance of way and structures about 18 per cent of their gross revenues. No analogous expense is borne by these lake lines, save a moderate amount for maintenance of terminals. The bulk boats on the great lakes are subject to very like expenses for operation and maintenance of vessels, as are these package boats. But the bulk boats, by larger vessels, greater tonnage capacity, and modernizing their methods, have overcome the upward tendency of expenses, and conduct operations profitably, even though their average revenue per unit of tonnage has decreased.

Particular stress is laid upon the expenses of the package boats, incident to the operation of terminals. This, it may be noticed, is a class of expense not borne by the bulk boats, even when they use the lake terminals of the same railroads which charge their controlled package boats for their use of such terminals. From the information shown in appendix, Exhibits 4 and 5, the following may be deduced for the seven lines:

Year.	All freight.			Year.	All freight.		
	Package.	Other.	Operat- ing cost.		Package.	Other.	Operat- ing cost.
	<i>Per cent.</i>	<i>Per cent.</i>	<i>Per ton.</i>		<i>Per cent.</i>	<i>Per cent.</i>	<i>Per ton.</i>
1905.....	70.41	29.59	\$1.20	1910.....	76.25	23.75	\$1.44
1906.....	70.00	30.00	1.27	1911.....	72.65	27.35	1.43
1907.....	70.69	29.31	1.30	1912.....	81.69	18.31	1.58
1908.....	75.26	24.74	1.33	1913.....	74.14	25.86	1.48
1909.....	77.36	22.64	1.45	1914.....	86.03	13.97	1.63

Certainly from 1907 the service has been largely the same. Throughout the entire time the passenger service has been confined to one line, and to only three vessels of that line, and passenger revenues have averaged only 5 per cent of the aggregate gross revenues. It seems immaterial, therefore, that the average operating cost per ton of all freight includes the passenger expenses. The point is that the expenses per unit of tonnage have increased with the increase in the percentage of package freight handled. It may be well therefore to discuss the handling charges at the ports.

Protestants insist that the methods used in handling package freight are antiquated, and that a great saving in expense would result from the employment of modern methods and modern machinery. On the other side, however, there are experts equally emphatic to the contrary. It seems not to be denied that there are more improved methods in use elsewhere, but the contention is that the conditions governing package freight on the lakes prohibit their use there. The record is not sufficiently conclusive to decide the controversy, even if a decision were necessary to the solution of the whole question here before us.

These handling charges have increased greatly, whether paid by the lines to employees direct or to rail carriers performing such service for the boat lines or to contractors doing such work on contract rates. But the carriers admit that the charges made by certain northwestern rail carriers at upper Lake Superior ports are excessive, and offer no reason why such charges are paid by them without protest. An investigation conducted by protestants' representative at Chicago indicates that the contract rate paid there is much in excess of actual cost, even allowing for the element of error disclosed upon cross-examination. With respect to this subject it may be said that there is of record the suggestion by respondents of the possibility of further errors in that Chicago check, but there is no proof thereof.

The solicitation expense incident to the securing of package cargo is much greater than with respect to bulk cargo. In this we find a further reason why operating expenses have increased somewhat in the past seven years. It appears also that with at least one line the soliciting agents are employed, while the lakes are closed to navigation, in the interests of the controlling rail carrier, as a reciprocal matter, but their wages meanwhile are paid by the lake line.

These respondents also urge that the Commission should consider the expense of various privileges included in the rates. Among these are direct delivery from package boats to private docks, storage, re-consignment, and "split" deliveries of carload lots. Services such as these should be paid for. If it be true, as said of record, that the storage of sugar for five months at the upper lake ports is worth 85 cents per ton, there should be a charge for that service against the sugar, of which it appears thousands of tons are stored. But we find in that fact no justification for a horizontal increase in all rates on all commodities. Like disposition may be made of the matter of such privileges generally.

So far as this record makes explanation of the extraordinary increase in the rent account of the Erie & Western Transportation Company, the cause would appear mostly to lie in Chicago. At that point its terminals are largely the property of the Western Warehousing

Company, a corporate subsidiary of the Erie & Western Transportation Company. The rent account of the latter is charged or credited with the net loss or profit of the former, but the financial statistics submitted by these carriers, and shown as Exhibit 4 in the appendix, do not take into account the balance sheet status of the terminal corporation. There are indications in the record that the balance sheet status of the Western Warehousing Company has been enhanced in recent years by transactions, not revealed in its income account, involving the sale of some of its property.

The decrease in the 1914 rent account under 1913 is partly due to the credit to the income account of the Western Warehousing Company that year of a large amount of interest on a mortgage owned by it. In previous years the operations of the Western Warehousing Company resulted in deficits as high as \$30,000, but it was not until 1911 that the Erie & Western Transportation Company made a charge to revenue because of rents. In that one year the net result, as compared with 1910, was a loss of almost \$50,000, the reason for which is disclosed of record as increased taxes and terminal rentals, due to increased appraisement values. In 1914 rents also suffered to the extent of \$47,000 loss in income, due to the burning of an elevator at Buffalo, the property of the Connecting Terminal Railway, another subsidiary of the Erie & Western Transportation Company.

Absorptions.—It has long been the practice of these lake lines to absorb at the various ports the charges made by land carriers, rail and other, incident to the receipt or delivery of freight at points located away from the water front or, if on the water front, not reached by the lake package freighters. In this way the lake lines have, so to speak, maintained the integrity of their differentials and retained tonnage which, it is claimed, would otherwise have gone to their rail competitors. This practice, however, is very costly, as the aggregate of such absorptions reduces their revenue accounts by many thousands of dollars, and the expenditures are increasing, both in the gross and per unit of tonnage.

Chicago, Milwaukee, Wis., and Buffalo, N. Y., are named as the ports where these expenses principally occur. One reason for the increase in the cost lies in the fact that as water-front property grows more valuable business establishments locate at points removed therefrom, and intermediate rail service or drayage is necessary to effect receipt or delivery in competition with rail service. But the extent of the increase on this account is not of record. It would appear that the increase in absorption expense at the various ports is due in large part to an increase in recent years of the switching charges of rail carriers at these ports. Such charges at Buffalo, for instance.

formerly on a per car basis, are now based on rates in cents per 100 pounds, and many receipts and deliveries are equalized in Buffalo and vicinity by absorbing rates which apply to distance blocks of 100 and 150 miles. Many of these charges are paid to the rail lines or systems which control the lake boats, not only at Buffalo, but at most of the lower lake ports, and at Chicago. At the latter port it is of record that fully 85 per cent of all absorptions are paid to carriers other than those controlling the lake routes, and the increases in these charges at Chicago are very considerable. It must be remembered, however, that these Chicago switching rates were established largely as a matter of reciprocity between the *rail* carriers to effect an opening of their terminals to each other. *Board of Trade of Chicago v. A., T. & S. F. Ry Co.*, 29 I. C. C., 438; *Rates on Hay to Chicago*, 34 I. C. C., 150.

Absorptions such as these are optional with the carrier, although, of course, they may be practically dictated by competitive conditions. But if the margin of profit in the business of the lake lines is as small as these respondents have urged throughout, it may be that there is great doubt of the wisdom on their part in persisting in reaching out for business at such great expense. Furthermore, to the extent that the reasonableness of switching charges such as these has not been tested, it may be pointed out that the lake lines have never sought such a test.

The financial showing.—From the foregoing it is apparent that the financial results of the operations of these lake lines can not be accepted as substantiating their contention of need of additional revenue. It may be added in passing that beyond what has been said, the record shows, particularly with reference to the Mutual Transit Company, that the intercorporate relations with the rail lines result in further depletion of lake line revenues. There may be mentioned in this respect the character of loan accounts and depreciation revenues, and the interposition of third corporations between the roads and the lake lines. See *Lake Line Applications under Panama Canal Act*, *supra*.

THE DIFFERENTIAL RELATION.

There remains for consideration the second question of the respondents, whether in the present differential relation there lie forces of competition which are likely to be found irresistible and which threaten the stability of the all-rail and ocean-and-rail increases incident to *The Five Per Cent Case*, *supra*.

These increases are said to be jeopardized by the new relation.

This report has already defined the term "differential." From the purely interested standpoint of the carriers the record further defines

“a suitable differential to a line requiring a differential” as “one determined upon the character and service of the route as well as from a consideration of what in the judgment of the carrier would give to such a line an equitable share of the business.”

Appendix, Exhibit 3, indicates the differential relation, past and present, in the class rates from New York, Philadelphia, Baltimore, and Boston to Chicago and St. Louis, via the all-rail, rail-and-lake, and ocean-and-rail routes. As already shown, the differentials on sugar and coffee were 7 cents, New York to Chicago, in 1900, and became 5 cents in 1901. Before the recent all-rail increases they had become 3 cents on sugar and 5 cents again on coffee. The trend of the differentials on flour, eastbound, has already been recited. Each successive increase in lake route rates has narrowed the differential under the all-rail rates.

It is urged by the respondents that commercial conditions in the various localities which do not enjoy lake route service have been adjusted, presumably, to the fixed differentials, in competing with localities which do enjoy the lower rates of lake route service. But it is impossible to regard the relation as fixed, when the history of the rates via all the routes is studied. It has by no means been the rule in the past that upon an increase or reduction in one, there must follow like action in the others. Even since these rail lines have controlled the boats, the differential relation, now considered so necessary to maintain, has been thrice disturbed. Furthermore, the ocean-and-rail rates never came down to the rail-and-lake level until the lake season of 1909. Before that time the New York to Chicago scale, ocean and rail, had been 65 cents first class for many years. It will be observed that it took but a little while after the rail-and-lake rates, New York to Chicago, increased to the 62-cent first-class scale in 1907, for the ocean-and-rail routes to meet the lake routes, by a cut of 3 cents first class. Since 1909, as will be noted from appendix, Exhibit 3, the ocean-and-rail routes have continued to meet the rates of the lake routes during the open season of lake navigation; throughout the balance of the year the ocean-and-rail rates have been on their former higher basis. And with the opening of the season of lake navigation in 1915, the ocean-and-rail routes again adopted the lake route basis, even though it cost them the increases earned in *The Five Per Cent Case*, *supra*.

These ocean-and-rail rates, it will be observed from a study of appendix, Exhibits 2 and 3, operate via numerous ports and over very roundabout routes. For territory of origin they are by no means limited to the seaboard. A system of absorptions of the full local charges of rail carriers to the north Atlantic ports permits them to reach into the interior of New England and the middle

Atlantic states and there meet the all-rail and rail-and-lake routes at seaboard rates, or at arbitraries slightly in excess thereof. The extent to which the Atlantic seaboard is thus, so to speak, projected inland varies with the amount of the rate and the territory of destination, but certain it is that it generally can be replotted through Worcester, Mass., Hartford, Conn., Poughkeepsie, N. Y., and almost to Harrisburg, Pa., while in instances it goes almost to the Niagara frontier, as far northwest as Watertown, N. Y., to the utmost limits of New England, and even into the province of Quebec, Canada—all, of course, at great cost to the ocean-and-rail routes.

Loyalty to the differential seems to be confined to the carriers. The shippers' view is that a natural water rate should reflect the economies incident to water carriage, and that rates created and maintained as are those here are contrary to business sense and amount in practice to a device whereby tonnage is deflected in violation of law. Without here deciding that question, it may be remarked that, while something may be said in support of a differential relation which gives each line a fair chance at the tonnage, nothing can be said for a differential relation which permits some routes to grow with the business of the country and keeps others practically at a standstill. Especially is this so where some of the favored routes are much more roundabout and handicapped than are these standard lake routes.

The Commission is unconvinced that these proposed rates should be permitted to become effective in order to restore the former relation. On the contrary, it is convinced that the maintenance of the present greater differentials will give to the lake routes an opportunity of growth which seems to have been denied them heretofore. Surely, if the absorptions, of which this record on behalf of the respondents is full, are necessary to and do retain tonnage at the various ports, it must be that the greater differentials will attract tonnage at such ports and beyond. The proposed increased rates have not been justified.

It may not be amiss to say at this juncture that the regulatory power of this Commission is not limited to "basic" rates, and that the respondents' graphic showing of the tremendous extent of the absorptions out of ocean-and-rail rates indicates strongly the need of protection of the lake routes and their differentials.

Chicago switching charges.—Included among the tariffs suspended herein are some wherein it is provided that on all eastbound freight paying rates less than sixth class from various points in the Chicago switching district via certain lake-and-rail routes, there shall be an increase of 1 cent per 100 pounds "on account of Chicago switching district expense." The present tariffs provide that Chicago rates will

apply from various points in the Chicago switching district on freight of all kinds via these same lake routes, save via the Erie Railroad Lake Line, where such higher charges as these became effective in 1914.

Protest against the increase of 1 cent is made by the Board of Trade of Chicago, representing a number of shippers of grain products and by-products located in the Chicago district, who are affected because the rates on their commodities are principally under sixth class. The carriers' evidence in this proceeding is general and not directed in any wise to the support of this particular extra charge. Upon hearing announcement was made that they would willingly forego the 1 cent increase, provided the general increases were granted. Both are not asked for. Naturally these Chicago protestants ask that, if a choice be necessary, the general and not the specific increase be granted.

It appears that the same service for which this extra charge is proposed is necessary on business from beyond Chicago as well as on the local traffic. Thus competitors of these protestants would be favored, as the charge is restricted to shipments of Chicago origin. It would be laid on some 4,000 cars annually. It must also be remembered that it will reduce the differential on this low-grade traffic by 1 cent. Past experience would indicate that the result will be a loss of lake tonnage and revenue. Upon this record we find that the proposed extra charge has not been justified.

The conclusions of the Commission necessarily require the cancellation of all the tariffs under suspension. An appropriate order to this effect will enter.

APPENDIX.
EXHIBIT No. 1.

The association of lake lines is composed of the following-named 11 steamer lines: Canada Atlantic Transit Company, Cleveland & Buffalo Transit Company, Detroit & Cleveland Navigation Company, Erie Railroad Lake Line, Lackawanna Transportation Line,¹ Lehigh Valley Transportation Company, Mutual Transit Company, Port Huron & Duluth Steamship Company, Rutland Transit Company, the Erie & Western Transportation Company (Anchor line), Western Transit Company. The steamers operated by these lines are as follows:

Name of line.	Names of boats.	Registered gross tonnage. ²	Carrying capacity, dead weight.	Operating between—	Through traffic arrangements with, at—	
					Lower lake ports.	Upper lake ports.
Canada Atlantic Transit Co. ³	Orr, Arthur.....	2,745	4,600	Chicago, Milwaukee, and Georgian Bay ports.	Grand Trunk Ry.....	{All western railroads diverging.
	Orr, Geo. N.....	2,872	4,600			
	Kearsarge.....	3,092	4,800			
Cleveland and Buffalo Transit Co. ³	See & Bee.....	6,381	1,500	Cleveland and Buffalo.....	{All railroads diverging at Cleveland and Buffalo.	
	City of Buffalo.....	2,940	1,000			
	City of Erie.....	2,498	1,000			
	State of Ohio.....	1,221	1,200			
	City of Detroit 3rd.....	6,061	1,000			
	City of Cleveland 3rd.....	4,568	1,000	Buffalo and Detroit, Cleveland and Detroit, and Mackinac Island.	{All railroads diverging at all ports touched.	
	Eastern States.....	3,077	700			
	Western States.....	3,077	700			
	City of Alpena 2nd.....	1,735	400			
	City of Mackinac 2nd.....	1,749	400			
Detroit and Cleveland Navigation Co. ³	City of Detroit 2nd.....	1,919	500	Chicago, Milwaukee, Fairport, Ohio, and Buffalo.	{Erie R. R., Buffalo, Rochester & Pittsburgh Ry., Buffalo & Susquehanna Ry., B. & O. R. R.	Do.
	City of St. Ignace.....	1,923	500			
	State of New York.....	1,807	150			
	Underwood, F. D.....	3,314	4,800			
	Cooke, D. W.....	3,398	5,100			
Erie Railroad Lake Line.....	Toga.....	2,320	3,300			
	Richardson, G. A.....	2,237	3,000			

¹ Lackawanna Transportation Line does not own or operate any vessels and its traffic is handled on the boats of and by the Canada Atlantic Transit Company.
² Registered gross tonnage: Under the rules of the United States Treasury Department, registered gross tonnage is arrived at by measuring all inclosed space, including crews, quarters, engine and boiler space, etc., allowing 100 cubic feet for 1 ton of 2,000 pounds.
³ Steamers are combined freight and passenger vessels, carry no freight in hold, all freight loaded on main deck; therefore carrying capacity limited to figures shown.

Name of line	
Lehigh Valley Transportation Co.	
Mutual Transit Co.	
Port Huron and Duluth Steamship Co.	
Transit Co.	

The Erie & Western Transportation Co.
(Anchor line).

Western Transit Co.....

¹ Carrying capacity through Welland Canal.

² Freight and passenger boat.

Conemaugh.....	3,804	5,500	Buffalo and Duluth, stopping at Erie, Cleveland, Detroit, Mackinac Island, Sault Ste. Marie, Houghton, and Marquette; Buffalo and Chicago, Ill., stopping at Erie, Detroit, and Milwaukee.	Pennsylvania R. R.; Buffalo, Rochester & Pittsburgh Ry.; all railroads diverging at Cleveland; Mich. Cent. R. R.; N. Y. C. R. R.; Pere Marquette R. R., D. T. & I. R. R., at Detroit.	All western railroads diverging at Chicago; C., St. P., M. & O. Ry.; G. N. Ry.; M., St. P., S. Ste. M. Ry.; N. P. Ry.
Delaware.....	3,901	5,500			
Junata ¹	4,333	3,200			
Mahoning.....	2,189	3,000			
Muncy.....	3,863	5,500			
Schuylkill.....	2,205	3,000			
Susquehanna.....	2,781	3,400			
Tionesta ²	4,329	3,200			
Wishnickon.....	4,062	5,500			
Allegheny.....	3,898	5,500			
Octorara ¹	4,329	3,200	Buffalo and Chicago, Milwaukee, Buffalo, N. Y., Hancock, Houghton, and Dollar Bay, Mich.; Duluth, Minn.; and Superior and Itasca, Wis.	N. Y. C. R. R.; West Shore R. R.; Buffalo, Rochester & Pittsburgh Ry.; Buffalo & Susquehanna Ry.	All western railroads diverging.
Boston.....	4,184	5,000			
Buffalo.....	3,951	6,000			
Chicago.....	3,195	4,500			
Duluth.....	4,623	6,500			
Milwaukee.....	3,327	4,500			
Mohawk.....	2,357	3,300			
Rochester.....	4,571	6,500			
Superior.....	4,544	6,500			
Troy.....	3,655	5,500			
Utica.....	3,533	4,800			

EXHIBIT No. 2.

Standard and differential routes to Chicago.

[Revised to May 1, 1915. Rates in cents per 100 pounds.]

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2 2 2 1

Standard and differential routes to Chicago—Continued.

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2 2 2

2

2 2

2

2 1

2 1

Standard and differential routes to Chicago—Continued.

From—	Routing.
Boston:	
Standard all rail—	
B. & A.	
B. & M.	
N. Y., N. H. & H.	
Differential all rail—	
National Dispatch—	B. & M. R. R. to Whi
G. E. line.	Junction; thence C. V
	Swanton, Vt., or B
	thence G. T. Ry. syste
	B. & M. R. R. to New
	thence C. P. Ry. and
	tions.
C. P. Dispatch....	N. Y., N. H. & H. R. R
	cord Junction, Mass.
	B. & M. R. R. to New
	thence C. P. Ry. and
	tions.
	B. & A. R. R. to Chatham
	thence Rutland R. R.
	wood, thence N. Y. C.
	Suspension Bridge; the
	R. R.
Rutland-M. C. line...	B. & M. R. R. to Belle
	thence Rutland R. R.
	wood; thence N. Y. C.
	Suspension Bridge; the
	R. R.
R., W. & O. line.....	B. & M. R. R. to Belle
	thence Rutland R. R.
	wood, N. Y., thence
	R. R. to Suspension
	thence either Wabash
	Pere Marquette R. R.
Standard rail and lake—	
B. & A.	Ball to West Albany
	thence N. Y. C. R. R.
	Shore R. R. to Buffal
	Western Transit Co.
	To Buffalo via connector
	Western Transit Co., E
	Lake Line, or Lehigh
	Transportation Co.
B. & M.	To Erie, Pa., or Buffal
	via connections and P
	thence Erie & Wester
	partation Co.
	To Buffalo via connector
	Lehigh Valley Trans
	Co., Erie R. R. Lake
	Western Transit Co.
N. Y., N. H. & H.	Ball to Harlem River, N
	to Jersey City, N. J.; th
	R. R. to Erie, Pa., or
	N. Y., thence Erie &
	Transportation Co.
Differential rail and	
lake—	
Canada Atlantic	B. & M. R. R. to Whi
Transit.	Junction, thence C. V
	Swanton, Vt.; thence C
	to Depot Harbor,
	thence Canada Atlanti
	Co.
	B. & M. R. R. to Belle
	thence Rutland R. R.
	burg, thence Rutland
	Co.
	N. Y., N. H. & H. R. R.
	burg, Mass.; thence
	N. Y. to Bellows Fall
	Rutland R. R. to Ogd
	thence Rutland Transi
Rutland Transit.....	N. Y., N. H. & H. R. R.
	Framingham or Bosto
	thence B. & A. R. R.
	hamp, N. Y., thence
	to Ogdensburg
	Rutland Transit Co.

Standard and differential routes to Chicago—Continued.

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RATES AND DIFFERENTIALS VIA SAVANNAH LINE, MALLORY LINE, MORGAN LINE, AND CLYDE LINE.

Savannah line from New York and Boston.—Via Ocean Steamship Company to Savannah, Ga.; thence via Central of Georgia Railway and Illinois Central Railroad and connections.

Rates, in cents per 100 pounds, are published to a number of points taking 110 per cent and higher of New York-Chicago rates in the states of Illinois, Iowa, Kentucky, and Missouri on the following differentials below the standard all-rail rates:

58 59 60

61

62 63

64

65

66 67 68 69

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71

From Philadelphia and Baltimore.—Via Merchants & Miners Transportation Company to Savannah, Ga.; thence via Central of Georgia Railway and Illinois Central Railroad and connections to Belleville, East St. Louis, and Cairo, Ill., St. Louis, Mo., and Paducah, Ky., only, rates, in cents per 100 pounds, are published at the following differentials below the rates from New York via Ocean Steamship Company to same points:

	1	2	3	4	5	6
From Philadelphia.....	5	5	2	2	2	2
From Baltimore.....	5	5	2	3	2	2

Mullory line and Morgan line.—These lines do not publish any rates to Chicago or East St. Louis for local delivery, but participate in a joint tariff issued by agent Sedgman naming the following rates, in cents per 100 pounds, to Chicago or east Mississippi River crossings on traffic destined to points in Missouri River territory:

	1	2	3	4	5	6
To Chicago from New York (see note).....	62	54	41	30	25	20
To east Mississippi River crossings from New York (see note).....	76	68	55	47	41	35

Clyde line.—Agent Sedgman publishes for this line the following proportional baring rates, in cents per 100 pounds, to Chicago and East St. Louis, to apply on traffic to Missouri River territory, via Charleston & Southern Railway:

36 54

45 42

42

NOTE.—These rates are used only as a basis for arriving at the through rates and apply via the Mullory line, Brunswick or Galveston and connections; the Morgan line, New Orleans or Galveston and connections; or the Clyde line, Charleston & Southern Railway.

RATES VIA ATLANTIC COAST LINE, SEABOARD AIR LINE, AND VIRGINIA, TENNESSEE & GEORGIA AIR LINE.

Rates are published from New York, Philadelphia, and Baltimore (and Boston where noted) to the destinations enumerated below, via the several steamer lines operating to Norfolk, Va., in connection with the lines named, on the same basis as those of the Kanawha Dispatch, Cumberland Gap Dispatch, Norfolk & Western Dispatch, etc.

Atlantic Coast Line.—Via Atlantic Coast Line Railroad and connections.

Seaboard Air Line.—Via Seaboard Air Line Railway and connections.

Virginia, Tennessee & Georgia Air Line.—Via Norfolk & Western Railway and connections.

Destinations.	Delivering lines.	Destinations.	Delivering lines.
Bellefonte, Ill. ¹	I. C.; L. & N.; S. Ry.	Lexington, Ky. ¹	C. N. O. & T. P.; Southern; L. & N.
Brookport, Ill. ¹	I. C.	Louisville, Ky. ¹	I. C.; Southern; L. & N.
Cairo, Ill. ¹	I. C., M. & O.	New Albany, Ind. ¹	I. C.; L. & N.; Southern.
Chillicothe, Ind. ¹	Vandalia.	Newport, Ky. ¹	L. & N.
Christopher, Ill. ¹	I. C.	Owensboro, Ky. ¹	I. C.; L. & N.
Channahon, Ind. ¹	Vandalia.	Paducah, Ky. ¹	I. C.; N. O. & St. L.
Cincinnati, Ohio ¹	C. N. O. & T. P.	St. Louis, Mo. ¹	C. N. O. & T. P.; I. C.; L. & N.; M. & O. and terminal companies.
Cincinnati Union Stock Yards, Ohio. ²	C. H. & D.	Thoburn, Ill. ¹	St. L., I. M. & S.
Covington, Ky. ¹	L. & N.	Walton, Ky. ¹	C. N. O. & T. P. (via S. A. L. only).
East St. Louis, Ill. ¹	C., B. & Q.; I. C.; L. & N.; M. & O.; St. L., I. M. & S.	Paducah, Ky. ²	N., C. & St. L. Ry.
Evansville, Ind. ¹	L. & N.		
Georgetown, Ky. ¹	C. N. O. & T. P.; F. & C.		
Jeffersonville, Ind. ¹	I. C.; L. & N.; S. Ry.		

¹ Rates apply only from Boston.

² Rates also apply from Boston.

ST. L. C. O.

RATES TO CANADIAN POINTS.

Canadian Pacific Dispatch.—From New York, via New England Steamship Company to either New Bedford, Fall River, Providence, New London, New Haven, or Bridgeport; thence N. Y., N. H. & H. R. R. and B. & M. R. R. to Newport, Vt.; thence C. P. Ry. and connections.

Rates are published, in cents per 100 pounds, only to Canadian points on the following differentials below the standard all-rail rates:

	1/2	
	1/4	1/4
1/4	1/4	1/4

National Dispatch—Great Eastern line.—From New York (see page 323 for routes) rates are published to Canadian points on differentials below the standard all-rail rates as shown above for Canadian Pacific Dispatch.

87 L. C. C.

EXHIBIT No. 3.

Comparative statement showing class rates and differentials of the several standard and differential routes from New York, Philadelphia, Baltimore, and Boston to Chicago, Ill., and St. Louis, Mo., 1900-1915.

CLASS RATES TO CHICAGO, ILL., VIA STANDARD AND DIFFERENTIAL ROUTES

[Rates in cents per 100 pounds.]

*Comparative
differential
and St. Lo*

*differentials of the several standard and
Baltimore, and Boston to Chicago, Ill.,*

CLASS RATES TO CHICAGO, ILL., VIA STANDARD AND

ROUTES—Con.

4

330 INTERSTATE COMMERCE COMMISSION REPORTS.

*Comparative
differential
and St. Lo*

*Differentials of the several standard and
Baltimore, and Boston to Chicago, Ill.,*

CLASS RATES TO CHICAGO, ILL., VIA STANDARD AND

ROUTES—*Con.*

87 L Q C

*Comparative
differential
and St. Lo*

*Differentials of the several standard and
Baltimore, and Boston to Chicago, Ill.,*

CLASS RATES TO CHICAGO, ILL., VIA STANDARD AND

ROUTES—Con.

1871

Comparative.
differential
and St. Lou

*! differentials of the several standard and
is, Baltimore, and Boston to Chicago, Ill.,*

CLASS RATES TO CHICAGO, ILL., VIA STANDARD AND

ROUTES—On

CLASS RATES TO ST. LOUIS, MO., VIA STANDARD AND DIFFERENTIAL ROUTES

1
2
3
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10

¹ Plus St. Louis bridge tolls.

ST L C C.

Comparative statement showing class rates and differentials of the several standard and differential routes from New York, Philadelphia, Baltimore, and Boston to Chicago, Ill., and St. Louis, Mo., 1900-1916 -Continued.

CLASS RATES TO ST. LOUIS, MO., VIA STANDARD AND

ROUTES—Con.

¹ Differential all-rail rates discontinued Mar. 15, 1910.
87 I. O. O.

² Plus St. Louis bridge tolls.

Comparative statement showing class rates and differentials of the several standard and differential routes from New York, Philadelphia, Baltimore, and Boston to Chicago, Ill., and St. Louis, Mo., 1900-1915—Continued.

CLASS RATES TO ST. LOUIS, MO., VIA STANDARD AND

ROUTES—**Cont.**

* Plus St. Louis bridge tolls.

ST. L. C. C.

Comparative statement showing class rates and differentials of the several standard and differential routes from New York, Philadelphia, Baltimore, and Boston to Chicago, Ill., and St. Louis, Mo., 1900-1915—Continued.

CLASS RATES TO ST. LOUIS, MO., VIA STANDARD AND DIFFERENTIAL ROUTES—Con.

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304

274

321

231

228

ST. L. C. Q.

EXHIBIT No. 4.

Lake Lines—Combined investment and income account for Canada Atlantic Transit Co., Erie & Western Transportation Co., Erie R. R. Lake Line, Lehigh Valley Transportation Co., Mutual Transit Co., Rutland Transit Co., and Western Transit Co.

	1905 ¹	1906 ¹	1907 ¹	1908 ¹	1909 ¹
Investments:					
Vessels.....	\$8,479,861.28	\$8,239,281.28	\$9,079,471.33	\$9,099,777.78	\$9,189,331.93
Docks, wharves, and buildings....	1,676,128.76	1,676,390.01	1,626,380.01	1,474,385.76	1,474,385.76
Other.....	59,171.15	59,121.15	59,006.47	58,958.65	70,737.73
Grand total.....	11,215,161.19	10,974,782.44	11,764,857.80	11,633,122.17	11,735,455.43
Operating revenue, lake:					
Freight.....	4,579,173.92	5,227,039.47	5,738,604.87	4,862,530.89	5,799,197.66
Passenger.....	201,767.64	218,002.57	230,771.23	192,915.61	302,542.64
Miscellaneous.....	78,758.01	37,868.94	48,974.70	32,970.00	65,321.00
Grand total.....	4,859,699.57	5,482,910.98	6,018,350.80	5,088,417.00	6,067,061.30
Operating expenses, lake.....	4,629,632.68	5,124,647.23	5,660,344.09	4,904,358.21	5,998,837.39
Net operating earnings, lake.....	230,066.89	358,263.75	358,006.71	184,058.89	65,354.21
Revenue from other operations.....	472,803.37	552,635.21	543,672.23	401,208.56	398,781.00
Expenses of other operations.....	332,032.16	339,025.96	364,209.48	306,536.17	322,851.53
Net operating earnings from other operations.....	140,771.21	213,609.25	179,462.75	94,672.39	65,929.47
Total net operating earnings.....	370,838.10	571,873.00	537,469.46	278,731.27	131,283.68
Taxes.....	48,919.37	52,985.22	57,002.08	67,689.38	65,382.21
Rents.....	87,268.76	95,669.82	97,791.86	107,868.67	117,771.79
Grand total.....	136,188.13	148,655.04	154,793.92	175,558.05	183,154.00
Net operating income.....	234,649.97	423,217.96	382,675.54	103,171.22	48,129.68
Net operating income, per cent of investment.....	2.00	3.86	3.25	.89	.....
Depreciation included in operating expenses.....	295,000.00	327,500.00	305,059.96	154,688.86	738,781.94
Accrued depreciation, Dec. 31: Vessels.....		250,000.00	125,059.96	459,738.82	1,195,868.36

¹ Years ended Dec. 31.

² Deficit.

Lake Lines—Combined investment and income accounts for Canada Atlantic Transit Co., Erie & Western Transportation Co., Erie R. R. Lake Line, Lehigh Valley Transportation Co., Mutual Transit Co., Rutland Transit Co., and Western Transit Co.—Contd.

	1910 ¹	1911 ¹	1912 ¹	1913 ¹	1914 ¹	10-year average, 1905-1914.
Investments:						
Vessels.....	\$10,090,668.97	\$9,200,777.51	\$8,785,601.29	\$8,736,477.95	\$8,923,890.13	\$8,981,614.34
Docks, wharves, and buildings....	1,434,680.93	1,434,680.93	1,434,980.93	1,596,498.65	1,581,683.41	1,541,018.52
Other.....	62,667.59	63,711.62	63,435.98	63,160.34	53,054.94	61,302.56
Grand total.....	12,570,517.49	11,681,670.06	11,256,518.20	11,368,636.94	11,531,128.48	11,572,185.42
Operating revenue, lake:						
Freight.....	5,678,007.44	5,325,072.97	5,561,200.03	5,887,255.41	5,151,424.82	5,380,950.69
Passenger.....	267,578.82	330,886.88	296,160.44	362,344.94	316,816.02	261,928.67
Miscellaneous.....	75,579.61	57,606.91	46,104.64	38,055.87	36,653.75	51,790.67
Grand total.....	6,021,165.87	5,713,566.76	5,903,465.11	6,287,656.22	5,504,394.59	5,694,670.03
Operating expenses, lake.....	5,918,605.51	5,673,753.52	5,812,533.32	6,228,900.00	5,741,654.33	5,569,296.63
Net operating earnings, lake.....	102,560.36	39,813.24	90,931.79	58,756.22	* 237,259.74	125,373.40
Revenue from other operations.....	375,346.66	328,333.77	309,695.31	371,115.80	236,535.64	308,012.64
Expenses of other operations.....	304,686.30	271,249.71	247,701.52	292,788.75	172,863.11	295,394.47
Net operating earnings from other operations.	70 660.36	57,084.06	61,993.79	78,327.05	63,672.53	102,618.17
Total net operating earnings.....	173,220.72	96,897.30	152,925.58	137,083.27	* 173,587.21	227,990.57
Taxes.....	57,258.87	60,151.94	65,618.88	62,912.83	64,311.24	60,305.21
Rents.....	114,600.93	168,755.88	182,365.63	175,622.39	145,851.12	129,357.49
Grand total.....	171,859.80	228,907.82	247,985.51	238,535.22	210,162.37	189,662.70
Net operating income..	1,360.92	* 132,010.52	* 95,069.93	* 101,451.95	* 383,749.58	38,328.86
Net operating income, per cent of invest- ment.....	.01	.....	.....	.....	.....	.33
Depreciation included in operating expenses.	159,339.70	235,126.46	265,930.57	332,425.07	335,519.32	.....
Accrued depreciation, Dec. 31: Vessels.....	1,237,817.01	1,457,708.47	1,627,909.19	1,940,055.07	2,479,318.19	.....

¹ Years ended Dec. 31.

* Deficit.

Rates of depreciation: Erie & Western Transportation Co., 1911 and 1912, 2 per cent; 1913 and 1914, 3 per cent. Erie R. R. Lake Line, 6 per cent to July 1, 1907, on inventory values; 6 per cent on residual values, less estimated scrap for year June 30, 1908, 4 per cent thereafter. Lehigh Valley Transportation Co., 2½ per cent. Mutual Transit Co., 5 per cent. Western Transit Co., 1905-1909, no regular rate; 1912-1914, 3 per cent.

37 I. O. O.

EXHIBIT No. 5.

Lake Lines division of tonnage as between package and bulk freight.

	1903 ¹			1904 ¹		
	Package freight.	Other freight.	Total.	Package freight.	Other freight.	Total.
Canada Atlantic Transit Co.....	(3)	(3)	(3)	(3)	(3)	(3)
Erie R. R. Lake Lines.....	249,624	101,041	350,665	214,847	80,997	304,844
Erie & Western Transportation Co.....	601,944	100,174	771,118	404,062	110,600	514,731
Lehigh Valley Transportation Co.....	(3)	(3)	(3)	(1)	(1)	(3)
Mutual Transit Co.....	246,403	148,367	434,770	287,783	32,772	320,554
Rutland Transit Co.....	102,044	139,747	248,791	79,232	78,122	157,354
Western Transit Co.....	747,458	253,512	1,000,970	518,046	253,222	771,268
Total.....	1,994,473	811,841	2,806,314	1,503,989	564,782	2,068,731

	1905 ¹			1906 ¹		
	Package freight.	Other freight.	Total.	Package freight.	Other freight.	Total.
Canada Atlantic Transit Co.....	95,405	156,865	252,269	101,484	208,245	304,729
Erie R. R. Lake Lines.....	359,561	185,830	545,400	272,899	181,577	454,476
Erie & Western Transportation Co.....	643,819	98,312	742,132	636,413	134,670	821,083
Lehigh Valley Transportation Co.....	345,520	235,906	621,426	399,054	137,961	536,915
Mutual Transit Co.....	379,544	48,734	428,278	454,193	29,451	493,644
Rutland Transit Co.....	117,335	103,335	220,670	119,281	173,048	292,329
Western Transit Co.....	733,922	312,028	1,045,947	781,230	346,301	1,127,531
Total.....	2,715,206	1,141,106	3,856,312	2,814,614	1,206,153	4,020,767

	1907 ¹			1908 ¹		
	Package freight.	Other freight.	Total.	Package freight.	Other freight.	Total.
Canada Atlantic Transit Co.....	130,865	145,479	266,334	112,210	128,877	251,087
Erie R. R. Lake Lines.....	351,148	69,263	411,501	285,498	14,185	300,683
Erie & Western Transportation Co.....	703,187	172,177	875,364	636,467	116,941	753,408
Lehigh Valley Transportation Co.....	447,418	168,055	615,473	303,896	163,954	467,850
Mutual Transit Co.....	649,958	142,469	796,427	616,644	123,998	740,642
Rutland Transit Co.....	141,981	148,586	290,567	137,864	114,984	252,768
Western Transit Co.....	678,130	422,892	1,112,022	700,516	237,120	937,636
Total.....	3,093,677	1,278,911	4,372,588	2,783,094	915,000	3,698,094

	1909 ¹			1910 ¹		
	Package freight.	Other freight.	Total.	Package freight.	Other freight.	Total.
Canada Atlantic Transit Co.....	127,606	146,530	276,226	96,805	162,175	279,370
Erie R. R. Lake Lines.....	293,506	67,780	361,286	237,217	100,818	338,035
Erie & Western Transportation Co.....	712,230	128,140	850,370	630,632	92,828	723,460
Lehigh Valley Transportation Co.....	365,027	97,924	462,951	424,767	126,146	550,913
Mutual Transit Co.....	643,350	84,807	708,156	621,040	119,369	740,409
Rutland Transit Co.....	219,207	131,832	351,039	212,140	126,945	339,085
Western Transit Co.....	791,258	265,250	1,056,517	741,947	220,125	962,072
Total.....	3,192,283	964,371	4,156,654	3,194,288	978,416	4,172,704

¹ Years ended Dec. 31.

¹ Not available.

Lake Lines division of tonnage as between package and bulk freight—Continued.

	1911 ¹			1912 ¹		
	Package freight.	Other freight.	Total.	Package freight.	Other freight.	Total.
Canada Atlantic Transit Co.....	116,409	196,283	312,692	127,435	149,713	277,148
Erie R. R. Lake Lines.....	255,153	56,291	311,444	275,642	46,448	322,090
Erie & Western Transportation Co.....	668,874	155,156	824,030	741,406	85,151	826,557
Lehigh Valley Transportation Co.....	358,982	204,676	563,658	311,838	96,085	406,923
Mutual Transit Co.....	599,206	122,858	722,064	622,879	88,438	711,317
Rutland Transit Co.....	196,447	116,362	312,809	194,270	109,745	304,015
Western Transit Co.....	682,780	232,027	914,807	741,970	101,357	843,327
Total.....	2,877,851	1,083,653	3,961,504	3,015,440	675,937	3,691,377

	1913 ¹			1914 ¹		
	Package freight.	Other freight.	Total.	Package freight.	Other freight.	Total.
Canada Atlantic Transit Co.....	120,402	155,643	276,045	125,238	138,000	263,238
Erie R. R. Lake Lines.....	272,516	60,458	332,974	256,004	25,210	281,214
Erie & Western Transportation Co.....	764,508	197,287	961,795	745,098	59,555	804,653
Lehigh Valley Transportation Co.....	311,190	231,504	542,694	311,570	85,259	396,829
Mutual Transit Co.....	713,950	104,759	818,709	666,317	36,129	702,446
Rutland Transit Co.....	150,628	131,658	291,286	169,736	114,029	283,765
Western Transit Co.....	787,086	210,311	997,397	757,586	34,208	791,794
Total.....	3,129,280	1,091,620	4,220,900	3,031,649	492,390	3,524,039

¹ Years ended Dec. 31.

Per cent of total tonnage.

	Package.	Other.		Package.	Other.
1905.....	70.41	29.59	1910.....	76.25	23.75
1906.....	70.00	30.00	1911.....	72.65	27.35
1907.....	70.69	29.31	1912.....	81.69	18.31
1908.....	75.26	24.74	1913.....	74.14	25.86
1909.....	77.36	22.64	1914.....	86.03	13.97

Lake Lines tonnage for the year ended Dec. 31, 1914, divided as between eastbound and westbound.

	Erie R. R. Lake Line.		Erie & Western Transportation Co.		Lehigh Valley Transportation Co.		Mutual Transit Co.	
	East-bound.	West-bound.	East-bound.	West-bound.	East-bound.	West-bound.	East-bound.	West-bound.
Products of agriculture:								
Grain.....	37,533	300	60,029		26,339		36,129	
Flour.....	103,067		275,847		128,303		247,225	38
Other mill products.....	55,735	62	107,896		54,441		96,729	69
Hay.....								
Tobacco.....			85	1,015				76
Cotton.....	93		59	20	1,215			
Fruits and vegetables.....	917	2,896	2,131	29,658	330	213	1,499	11,699
Other products of agriculture.....			21,975	5,362	1,011	448	5,769	2,065
Total.....	197,345	3,258	468,022	36,055	211,699	661	396,322	17,932
Products of animals:								
Live stock.....								
Dressed meats.....								
Animal products canned.....								
Other packing-house products.....	38		8	282	117		215	1,221
Poultry, game, and fish.....			445	7	56		2,174	11
Wool.....				345				
Hides and leather.....	86		8	355		2,924		
Other products of animals.....	1,172		507	6,445	169		389	1,996
Total.....	1,296		975	7,397	342	2,924	2,799	1,232
Products of mines:								
Anthracite coal.....						58,920		
Bituminous coal.....								
Coke.....								
Iron ore.....								
Other ores.....			34	128				35
Stone and other like articles.....	24		64	1,262		2,249		6,769
Other products of mines.....	6,510	856	8,969	4,235	2,865	1,300	56,438	6,265
Total.....	6,534	856	9,067	5,625	2,865	62,469	56,438	12,999
Products of forests:								
Lumber.....			10,801	879	80		31,826	68
Other products of forests.....			2	419		18	3,712	714
Total.....			10,803	998	80	18	35,538	777
Manufactures:								
Petroleum and other oils.....	4	1,921	341	2,348	15	650	79	2,294
Sugar.....		25,325	8,085	34,732	5,544	42,736		16,277
Naval stores.....			1	266				65
Iron, pig and bloom.....				256		3,420		
Iron and steel rails.....	161			640		9,980		211
Other castings and machinery.....	113	2,278	251	35,297		775		27,699
Bar and sheet metal.....		877	83	18,946	824	3,530		22,638
Cement, brick, and lime.....			18	4,471	17	7,616		8,741
Agricultural implements.....	2,320		918	1,054	2,862	28	37	2,684
Wagons, carriages, tools, etc.....			315	2,538				226
Wines, liquors, and beers.....	1,021	310	74	1,559				1,124
Household goods and furniture.....			237	11,497			27	4,574
Ice.....								
Other manufactures.....	4,407	8,667	14,778	115,333	8,090		1,699	69,777
Total.....	8,426	39,378	25,141	228,967	17,342	68,668	1,223	147,275
Miscellaneous commodities not specified:	3,465	4,244	487	11,096	17,173	5,815	86	2,348
Merchandise.....	1,716	14,696			3,478	3,272	665	33,299
Total revenue freight.....	218,782	62,432	514,495	290,158	252,979	143,840	427,823	219,698

Lake Lines tonnage for the year ended Dec. 31, 1914, divided as between eastbound and westbound—Continued.



Lake Lines classification of tonnage for year ended Dec. 31, 1914.

[Classification made in accordance with the "Classification of Freight Commodities of the Association of American Railway Accounting Officers," issued in 1911.]

Nos. 698 and 707 (Sub-Nos. 215 and 541).

ODEN & ELLIOTT

v.

SEABOARD AIR LINE RAILWAY ET AL.

Submitted October 19, 1915. Decided December 20, 1915.

Following the principles announced in *Nicola, Stone & Myers Co. v. L. & N. R. R. Co.*, 14 I. C. C., 199, claims for reparation on shipments of yellow-pine lumber from points in Alabama and Mississippi to various destinations, based on the Commission's decisions in *Central Yellow Pine Asso. v. I. C. R. R. Co.*, and *Tift v. S. Ry. Co.*, 10 I. C. C., 505 and 548, denied, except as to certain shipments upon which complainants bore the charges for the transportation.

V. L. Allen for complainants.

R. Walton Moore and *M. P. Callaway* for defendants.

SUPPLEMENTAL REPORT OF THE COMMISSION.

LEMENTS, *Commissioner*:

These cases involve claims for reparation on carload shipments of yellow-pine lumber from points of origin in Alabama and Mississippi to various points of destination, based on the Commission's decision in *Central Yellow Pine Asso. v. I. C. R. R. Co.*, 10 I. C. C., 505, and *Tift v. S. Ry. Co.*, 10 I. C. C., 548, condemning as unjust and unreasonable certain increased rates, and are the only ones remaining unsettled from among the great number of such claims decided subsequent to the decree of the United States Supreme Court in 1907 upholding our decision in those cases, all of the others having been adjusted between the parties on the basis hereinafter referred to.

The first hearing in these cases was had in April, 1910, upon request of complainants, who insisted that their claims as to shipments from f. o. b. mills were differently circumstanced from those considered in *Nicola, Stone & Myers Co. v. L. & N. R. R. Co.*, 14 I. C. C., 199, and should not be controlled by the ruling therein. At that hearing, and before any evidence was introduced, an agreement was made by the parties for the satisfaction of complainants' claims by the payment of 67 per cent of the amount collected in excess of the rates found by the Commission to be reasonable, "based upon shipments on which the freight was paid by them or for their account," 37 I. C. C.

they owning the shipments in transit"; the amounts due to be ascertained and paid according to the terms and provisions of certain compromise agreements between the carriers and all of the many other claimants for reparation, who had presented to the Commission their claims on the same grounds as those here involved, for uniform and nondiscriminatory settlement of the same. These agreements, dated March 18 and May 14, 1909, were filed with the Commission and were approved by it upon the express request of the claimants and the carriers.

The hearing, however, proceeded on the question of whether complainants were entitled to reparation on shipments sold by them f. o. b. at the mills. Applying the rule laid down in the *Nicola, Stone & Myers case, supra*, we decided that they were not, Unreported Opinion No. 253, and complainants thereupon withdrew most of their claims, leaving for settlement claims on account of 259 shipments, aggregating \$2,569.31. Meanwhile, pursuant to the settlement agreement made at the hearing, defendants' so-called clearing house, established for the purpose of adjusting this class of claims, had called upon complainants for the necessary proof thereby required. The proof finally submitted, after an interval of about seven months, proved inconclusive and unsatisfactory to the clearing house. Many of the expense bills were lacking and many of the claims were computed on estimated weights. The bills of lading and expense bills furnished were considered inadequate because the clearing house in adjusting many similar claims, where filed by more than one party on account of the same shipments, which was not infrequent, had found it needful to resort to claimants' settlement sheets and account books on the question as to who bore the freight charges. It also appeared that complainants had charged back the freight to the mills from which the shipments had been purchased. Complainants upon being requested by the railway clearing house to produce their account books did so, but after a few claims had been checked declined to permit further examination thereof, on the ground, as they contended, that the bills of lading were conclusive upon the carriers of complainants' right to reparation. The carriers thereupon declined to adjust claims except upon such shipments as to which satisfactory proof as to who paid and bore the freight charges had been furnished, and, the complainants being unwilling to accept a partial settlement on that basis, there the matter stood until 1914, when complainants advised the Commission that their claims had not been paid.

A supplemental hearing has since been had, at which complainants were required by the Commission to produce their account books, which they did under protest, and the same were examined by rep-

representatives of both of the parties, who reported four classes of claims, as follows:

	Number of claims.	Amount.
1. Claims on account of shipments on which the complainants bore the freight charges.	101	\$924.52
2. Claims on account of shipments sold by complainants f. o. b. mills.....	10	84.94
3. Claims on account of shipments to Allentown, Pa.....	64	741.12
4. Claims on account of shipments purchased by complainants f. o. b. destinations and on which freight charges were charged back by complainants to vendors....	84	818.73

The claims involved in item 1 should be promptly paid. The complainants contend that they should be paid dollar for dollar and not merely on the 67 per cent basis originally agreed to, because, as they allege, defendants have broken the agreement by not paying the claims promptly. As to this the carriers set up that they offered and have always stood ready to pay these proven claims on the basis of the agreement; and as the defendants were not only justified but in duty bound under our decision in the *Nicola, Stone & Myers case, supra*, to secure better evidence of complainants' right to payment than was originally offered, we are of the opinion that the defendants are not chargeable with the delay incident to securing such necessary and proper proof and that their full obligation under the agreement will be met by a prompt refund on the 67 per cent basis without interest.

The claims covered by item 2 are invalid under our original decision herein, for the reasons therein stated.

The claims embraced in item 3 must be denied because the rates to Allentown, Pa., were not involved in the cases on which the claims are based.

The disposition of the fourth and last class of claims above enumerated is also determined by applying to the established facts the principles announced in *Nicola, Stone & Myers* and related cases, which involved substantially the same questions, growing out of claims on account of shipments of lumber on which carriers collected rates condemned as unreasonable in the *Tift* and *Central Yellow Pine cases, supra*. In that case we were called upon to decide to whom reparation should be awarded as between the contending consignors and consignees appearing of transportation record, and it was there held that—

The reparation is due to the person who has been required to pay the excessive charge as the price of transportation. It follows that we must, in making orders of reparation in these cases, upon proper proof of the shipments, make such orders in favor of those who paid the charges as freight charges, or on whose account the same were paid, and who were the true owners of the property transported during the period of transportation.

The complainants contend that the inquiry implied by the rule laid down in the *Nicola, Stone & Myers case* extends only to the respective titles of the persons known to the carriers in the transaction; that is, the shipper named in the bill of lading and the consignee. The defendants contend that in any case where the question is raised the carriers may show who ultimately bore the freight charges for the transportation, regardless of whether or not originally known to them as a party to the transportation transaction.

To avoid misapprehension of our reference in that case to the ownership of the freight, it seems proper to say here that it is our view that the party entitled to recover is he who has either by himself or by another paid and borne the freight charges for the transportation service, irrespective of the title to the property shipped. What we said in that case with respect to the question of ownership was, as above stated, incidental to a discussion of the conflicting claims of the consignees, on the one hand, who had bought the property transported from the consignors before shipment and had paid and borne the freight charges, and the consignors, on the other hand, who, although having sold the property f. o. b. at the mill, claimed to be the parties damaged and entitled to recover, because the establishment of the freight rate found unreasonable had affected the price at which they had sold the lumber. In that case, as in this, the ultimate test as to who shall recover was, and is, the bearing of the freight charges for the transportation service; and, as we have seen, this may be either the consignor or the consignee, or another party, even though not disclosed at the time the shipment was made. It is elementary that an undisclosed principal of a nominal shipper can maintain an action at law against a carrier for damages to a shipment in transit. *New Jersey Steam Navigation Co. v. Merchants' Bank*, 6 How., 344, 381; *Ford v. Williams*, 21 How., 287.

From this brief review of the principles that have governed us in making awards of reparation and determining the rights of parties to receive such awards it must be plain that whether or not the complainants in this case are entitled to reparation from the defendant carriers in connection with the claims covered by item No. 4 turns upon the question of fact as to who ultimately bore the excessive charge for the transportation.

The shipments involved in this item were made by various mills from which complainants purchased them, and in most cases were made in complainants' name. Two of the shipments were consigned "order notify," the remainder to parties other than complainants. All of the shipments embraced in this item were purchased by complainants f. o. b. destination and were sold in the same way. The consignees paid the charges but deducted them in their subsequent settlements

with complainants. Complainants admit that they charged them back to their vendors. Complainants state that they will distribute any reparation which they may recover among the various vendors of the shipments, as their interests may appear; and, further, that they actually owned 47 of the shipments by virtue of the fact that they owned nearly, if not all, of the stock in the shipping mills or financed the mills; but the shipping mills are not before us and neither the stock ownership, the credit alleged, nor the assurance of complainants' intention to distribute any funds received by them on account of these shipments would warrant an award to them.

A similar question was presented to the Commission in connection with the case of *Lindsay Bros. v. G. R. & I. Ry. Co.*, 15 I. C. C., 182, wherein the complainants, located at Milwaukee, Wis., caused certain shipments to be made for their account by a manufacturer of engines and boilers at Kalamazoo, Mich., to consignees located at Woodford and Argyle, Wis. The Commission there found the charges collected to have been unreasonable, and awarded reparation to the complainants, although, not being named in the bill of lading or freight bill, they were not in the ordinary and generally accepted sense either the consignor or consignee; but upon the hearing it was proven that they had sold the shipments in question f. o. b. destination and that the respective consignees, in remitting the invoice price thereof, deducted the amount of the freight charges in each case. Therefore, in answer to the contention of the defendant carriers that complainants were not entitled to reparation because neither consignor nor consignee, the Commission held that—

• • • the evidence is conclusive that complainant bore the burden of any charge over and above what would have been charged had the shipment been made from Chicago, the result in this particular case being that complainant actually sustained the loss claimed.

In that case the complainants were, upon the prima facie evidence, strangers to the transportation transaction; but looking to the substance of things, and upon submission of satisfactory proof of having borne the freight charges, the Commission awarded them the reparation as the parties damaged.

Here we have the reverse of the situation presented by the facts in the *Lindsay Bros. case, supra*. The complainants, prima facie parties to the transportation transaction, are claiming the right to reparation, without opposition on the part of the consignees—the other parties to the transportation record. They have, however, upon the evidence adduced failed to establish that they ultimately bore the freight charges. Obviously the rule applied to bring the complainants in the *Lindsay case* within the test of damage laid down in the *Nicola, Stone & Myers case* must in the instant case operate to deny

complainants' right to an award of reparation in connection with the last-mentioned class of claims. The parties shown upon the record to have borne the freight charges are not before us, and are now barred by the statute of limitations.

Upon submission by defendants of proof of settlement of the claims involved in item No. 1 the complaint will be dismissed.



No. 4338.

MANUFACTURERS & MERCHANTS' ASSOCIATION OF
NEW ALBANY, IND., ET AL.,

v.

ABERDEEN & ASHEBORO RAILROAD COMPANY ET AL.

Decided December 27, 1915.

Upon reconsideration of the question of reparation, conclusion of original report herein, denying complainants' right thereto, affirmed.

Hines & Norman for complainants.

R. Walton Moore and *F. W. Grathmey* for defendants.

SUPPLEMENTAL REPORT OF THE COMMISSION WITH RESPECT TO
REPARATION.

CLEMENTS, *Commissioner*:

The Commission, in its original report in this case, 24 I. C. C., 331, found that in maintaining from southern points of origin generally to New Albany, Ind., a point on the north bank of the Ohio River, rates higher than to Louisville, Ky., on the south bank thereof, by the amount of the usual bridge toll or charge, while contemporaneously maintaining from the same points of origin to other north bank points similarly situated rates to which no such bridge toll or charge had been added, the defendant carriers subjected complainants and shippers of New Albany to undue prejudice and disadvantage, from which they were ordered to cease and desist. Reparation was denied.

Following this decision petitions were filed on behalf of the complainants and defendants for a rehearing on certain features of the case, including that of reparation. These petitions were in a supplemental report, 25 I. C. C., 116, denied as to all contentions of both parties except as to complainants' request for reconsideration of the

question of reparation. Oral argument was granted, and has since been had upon this question, which is the subject of this report.

The complaint, filed August 16, 1911, contained a prayer for reparation on behalf of such shippers and consignees as had during the period of two years prior thereto paid freight charges on shipments moving to and from New Albany, such reparation to be measured by the extent of the discrimination which the Commission should find to have been practiced in the collection of freight charges as between the points compared; but neither upon the original hearings nor in the oral argument subsequently had on this subject have complainants proved that they suffered damage as a result of said discrimination.

Complainants' contention is that having paid rates which were unduly discriminatory against New Albany shippers and consignees, it legally follows that the latter are entitled to an award of damages measured by the difference between the rates paid and those which they would have paid had the adjustment ordered by the Commission been in effect at the time their shipments moved. We do not think that this legal result follows, because (1) the ascertainment of a present undue discrimination does not raise a conclusive presumption of the unreasonableness of such discrimination in the past; (2) proof of undue discrimination is not sufficient of itself to justify an award for damage, which is not presumed but must be proven; (3) even where actual damage is shown, the extent of such damage is not necessarily to be measured by the difference in the rates which constitute the discrimination, but it may be greater or less or the same in amount as the rate difference; and (4) in any event the amount of the pecuniary loss must be established by such evidence as would be required to recover in a suit at law. *Anadarko Cotton Oil Co. v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 43. This view was sustained by the Supreme Court of the United States in the cases of *Pa. R. R. Co. v. International Coal Co.*, 230 U. S., 184, 200, and *Meeker & Co. v. L. V. R. R. Co.*, 236 U. S., 412, decided since the reparation feature of the instant case was reargued, wherein it was held that a mere finding of unjust discrimination without proof of the actual damage thereby caused will not authorize an award of reparation.

These principles were followed in *New Orleans Board of Trade v. I. C. R. R. Co.*, 29 I. C. C., 32; *Hormel & Co. v. C., M. & St. P. Ry. Co.*, 30 I. C. C., 98; *Greenbaum v. L. & N. R. R. Co.*, 31 I. C. C., 699; and other cases subsequently decided involving the same question. Applying them to the case before us we must adhere to our conclusion heretofore announced that complainants have not established their right to an award of reparation.

While the failure to establish the injury alleged to have been sustained as the result of the discrimination found is, for the reasons stated, conclusive of the reparation feature of this case, it seems not inappropriate in announcing this conclusion to call attention to the fact that the Commission in a subsequent proceeding, *Rates on Lumber from Southern Points*, 34 I. C. C., 652, growing partly out of the efforts of the carriers to remove such discrimination, gave approval to an increase in the rates to the north bank Ohio River crossings found to have been unduly preferred, to the limited extent necessary to remove the undue prejudice against New Albany, thus in a measure, considering the similarity in their location and circumstance upon which our prior finding of discrimination was based, holding that the rates to the latter point were not shown to be unreasonable *per se*.

87 I. C. C.

No. 3864.¹

TRAFFIC BUREAU OF THE SIOUX CITY COMMERCIAL
CLUB

v.

ANDERSON & SALINE RIVER RAILROAD COMPANY
ET AL.

Submitted April 1, 1915. Decided December 23, 1915.

1. Where there is no privity of interest between the consignor and consignee, the filing of a claim for reparation by the consignee does not constitute a filing by or on behalf of the consignor and will not stop the running of the statute of limitations as to the consignor.
2. Upon facts and circumstances substantially similar to those considered in *Omaha Commercial Club v. A. & S. R. Ry. Co.*, 27 I. C. C., 302, *Held*, That the consignees are without interest in the charges paid and are not entitled to reparation. Reparation awarded to consignors upon certain shipments.

C. E. Childe for Sioux City Commercial Club.

J. F. Byers and *E. B. Curtis* for Fullerton Lumber Company.

Andrews, Streetman, Burns & Logue and *R. H. Kelley* for Kirby Lumber Company.

J. L. Coleman for Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company.

H. G. Herbel and *F. G. Wright* for Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company; and Texas & Pacific Railway Company.

C. S. Burg and *J. W. Allen* for Missouri, Kansas & Texas Railway Company and Missouri, Kansas & Texas Railway Company of Texas.

E. A. Smith, *K. F. Burgess*, *A. P. Humburg*, and *R. B. Scott* for Chicago, Burlington & Quincy Railroad Company; Illinois Central Railroad Company; and other defendants.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

In these cases reparation is demanded upon the authority of our findings and order in *Sioux City Commercial Club v. A. & S. R. R. Co.*, 24 I. C. C., 177.

In that proceeding we held that a rate of 30 cents per 100 pounds for the transportation of yellow-pine lumber, in carloads, from

¹ This proceeding also embraces complaint in No. 5294, Kirby Lumber Company v. Gulf, Colorado & Santa Fe Railway Company et al.

producing points in the states of Arkansas, Louisiana, Mississippi, and Texas to Sioux City, in the state of Iowa, was unreasonable and for the future should not exceed 28 cents. It was further held that with respect to shipments that moved under the higher rate, within two years prior to the filing of the petition, the complainant's members, on whose behalf the petition was presented, were entitled to reparation on the basis of the lower rate found to have been a reasonable rate for the service. Later certain parties in interest named in the original petition, including the Fullerton Lumber Company, filed detailed statements of their claims both with the delivering carriers and with the Commission. Subsequently the Kirby Lumber Company filed a complaint asking reparation on some of the identical shipments on which the Fullerton Lumber Company and other consignees were also seeking an award of damages. Thereupon the last named company filed a supplemental complaint setting forth the facts upon which it based its right to reparation on all claims theretofore presented by it to the delivering carriers for verification. All these conflicting claims were assigned for further hearing and are fully explained on the record now before us.

Certain preliminary questions arise with respect to the application of the statute of limitations, but it is unnecessary to consider them in so far as they relate to the claim of the Fullerton Lumber Company.

Many shipments included in the claim of the Kirby Lumber Company moved more than two years prior to the filing of its complaint and appear to have been presented on the theory that its claim was not barred as to such of those shipments as had been specified in the claims theretofore filed in the original case by other members of the original complainant. In support of this view *Youngblood v. T. & P. Ry. Co.*, 21 I. C. C., 569, is cited. There reparation was awarded the consignor on a formal complaint filed more than two years after the shipment moved, it appearing that the consignee had within the statutory period filed an informal complaint covering the same shipment. In *International Agricultural Corporation v. L. & N. R. R. Co.*, 29 I. C. C., 391, in distinguishing the case just cited, we said:

This case is not exactly like the one before us. Clay, Robinson & Company were the agents of Youngblood in the payment of this freight. It was a part of their duty to see that the freight was correct and to file any claim for overcharge or other unreasonable exaction. In so doing they acted for the shipper.

In this proceeding the consignees are seeking reparation in their own behalf and adversely to the claims of the consignors. Under such circumstances, and in the absence of any showing of a privity of interest between them, we think it is clear that the claims for

reparation filed in behalf of certain of the original complainant's members may not be regarded as having been filed by or in behalf of the Kirby Lumber Company. We hold, therefore, that the claim of the Kirby Lumber Company, as to all shipments delivered more than two years prior to November 4, 1912, when its complaint was filed, is barred by the statute of limitations.

From the evidence offered in behalf of the Fullerton Lumber Company it appears that, with the exception hereinafter mentioned, all the shipments by the Kirby Lumber Company and by others were, in fact, bought on the basis of a price at destination which was made up of and included the mill price and the freight charges at an estimated weight. On the arrival of each shipment the consignee paid the full amount of the freight charges at actual weight and received credit in that amount from the consignor. The paid expense bill, together with a check for the balance of the invoice price, was sent to and accepted by the consignor in full settlement of the invoice. In some instances, the shipper, in accepting the order, stipulated that any advance or decline in the rate was to be added to or deducted from the delivered price named. The Kirby Lumber Company's order blanks contained no such provision, but its invoices called for a delivered price determined as a unit by competitive and other conditions as well as by the amount of the freight charges at an estimated weight.

The facts developed in this proceeding are substantially similar to those considered by us in *Commercial Club of Omaha v. A. & S. R. Ry. Co.*, 27 I. C. C., 302, in which we held that the consignees were not entitled to reparation. Following that decision, we find that the Fullerton Lumber Company had no interest in the charges paid on the shipments above described and may not lawfully be awarded reparation.

At least one of the shipments, on which the Fullerton Lumber Company asks reparation, although consigned to it at Sioux City, was purchased on the basis of a 28-cent rate, applicable to a point short of destination and at an estimated weight. The complainant paid the freight charges based on the applicable rate of 30 cents at actual weight and received credit from the consignor, the Kirby Lumber Company, on the basis of 28 cents. This shipment is not included in the claim of the Kirby Lumber Company; that company, in fact, expressly disclaims any right to reparation on shipments sold on such a basis. It appears here, however, as it did in *Commercial Club of Omaha v. A. & S. R. Ry. Co.*, *supra*, that yellow-pine lumber frequently weighs less than the estimated weight, in which event the actual freight charges payable at destination may be less than the estimated freight charges to the point short of destination. We are of the opinion that the facts and circumstances surrounding the pay-

ment of the freight charges on the shipment in question are so merged in the commercial transactions between the consignor and consignee as to fail to afford a proper basis for an award of reparation to the consignee.

There seems to have been some misunderstanding as to the scope of the hearing, and no witnesses were present to testify on behalf of original complainant's members other than the Fullerton Lumber Company. It is conceded, however, by counsel for the original complainant that the other members bought the lumber on which they seek reparation on precisely the same basis as obtained in the case of the shipments involved in the claim of the Fullerton Lumber Company. No award, therefore, may lawfully be made to them.

In the complaint of the Kirby Lumber Company, heard herewith, we find that the transportation charges were paid on account of and were borne by that company on the shipments made by it. We further find that in so far as that complainant paid freight charges upon the basis of the rate of 30 cents which the Commission found to be unreasonable in the original case, *supra*, it has been damaged to the extent that such charges exceeded those which would have accrued at the rate of 28 cents, which the Commission found reasonable in that case, and that that complainant is entitled to reparation accordingly on all shipments not barred by the statute.

In proof of its claim that complainant offered in evidence expense bills, bills of lading, invoices, and other records covering over 200 separate shipments. Under our findings herein many of these claims are barred by the statute of limitations. In some instances copies only of expense bills are before us, it appearing that the originals are in the possession of the initial carrier in connection with claims for overcharges. The Commission will not undertake to check these various exhibits, but in accordance with the usual practice in cases of this character, they will be returned to the complainant in order that it may prepare a statement showing as to each shipment the date of movement, point of origin, point of destination, route, weight, car number and initials, rate applied, charges collected, and the amount of reparation due under our findings herein: when such a statement, being first submitted to and verified by the defendants, shall have been filed with the Commission the matter will have consideration with a view to the issuance of an order of reparation.

No. 6900.

EAST JERSEY RAILROAD & TERMINAL COMPANY

v.

CENTRAL RAILROAD COMPANY OF NEW JERSEY ET AL.

No. 6900 (Sub-No. 1).

SOUTHERN COTTON OIL COMPANY

v.

EAST JERSEY RAILROAD & TERMINAL COMPANY ET AL.

Submitted November 20, 1915. Decided January 3, 1916.

Upon consideration of evidence regarding certain changes in rates to New York, following *The Five Per Cent Case*, 32 I. C. C., 325, conclusions in original report modified and *Held*, That joint rates should be established in connection with the terminal company to New York, including points in New York harbor within the established lighterage limits and delivery on board vessels in New York harbor for export, not in excess of those contemporaneously maintained by defendants to New York over other routes.

Eugene Mackey for East Jersey Railroad & Terminal Company.

J. T. Kilbreth for Southern Cotton Oil Company.

J. E. Reynolds for defendants other than the East Jersey Railroad & Terminal Company.

REPORT OF THE COMMISSION ON SUPPLEMENTAL HEARING.

HALL, Commissioner:

In its original report in this proceeding, *East Jersey R. R. & T. Co. v. C. R. R. Co. of N. J.*, 36 I. C. C., 146, the Commission found: (1) That the East Jersey Railroad & Terminal Company, hereinafter referred to as the terminal company, and the Southern Cotton Oil Company, hereinafter termed the complainant, had made out a prima facie case of unjust discrimination against the former and shippers on its line through the withdrawal in April, 1914, by defendants, other than the terminal company, of joint rates in connection with that company from various points to New York, including points in New York harbor within the established lighterage limits, which had been in effect for some years; (2) that, in the absence of any evidence from defendants, other than the terminal company, such defendants had failed to sustain the burden of proof imposed upon them by law to show that the resulting increased rates were just and reasonable; and (3) that complainant had made a prima facie

showing of damage sustained on shipments moving over the lines of defendants in No. 6900 (Sub-No. 1) to New York, including points in New York harbor within the established lighterage limits and delivery on board vessels in New York harbor for export, to the extent that complainant paid and bore charges in excess of those that would have accrued under the joint rates in effect prior to April 1, 1914, and that it was entitled to reparation on such shipments.

No order was entered, but the report stated that the defendants should within 60 days from the date of service thereof restore joint rates in conjunction with the terminal company, not in excess of those in effect March 31, 1914, including lighterage and transit. It further stated that, in accordance with stipulation made at the hearing, the case would be set for further hearing to determine the amount of reparation to be awarded.

Before the expiration of the 60 days representations were made to the Commission by the Central Railroad Company of New Jersey that owing to increase in rates to New York, following the Commission's decision in *The Five Per Cent Case*, 32 I. C. C., 325, a literal compliance with the requirements of the Commission's report would result in unjust discrimination and numerous violations of the long-and-short-haul rule of the fourth section, in that rates to points on the line of the terminal company would be lower than to intermediate points.

Accordingly, the Commission notified all parties that compliance with the requirements of its report should be deferred pending determination by the Commission of whether or not a modification of such requirements had become necessary because of changes in the rate situation occurring after submission of the case, and a supplemental hearing was had.

The evidence introduced on behalf of the carriers and the admissions of record by counsel for the terminal company and for complainant substantiated the representations upon the strength of which the supplemental hearing was granted. Upon the record herein we are of opinion and find that the joint rates established in connection with the terminal company to New York, including points in New York harbor within the established lighterage limits and delivery on board vessels in New York harbor for export, should not exceed those contemporaneously maintained by defendants to New York over other routes.

It appeared at the hearing that by tariff published by the Central Railroad Company of New Jersey, effective October 30, 1915, the current New York rates are provided in connection with the terminal company in cases where through rates are in effect from points of origin to New York in connection with the Central Railroad Com-

pany of New Jersey. Both the terminal company and complainant expressed themselves as satisfied with the rate basis accorded by this tariff. No order for the future appears to be necessary.

There remains the question of reparation. Upon consideration of all the evidence now of record we are of opinion, and find, that complainant has been damaged, and is entitled to reparation, on shipments moving over the lines of defendants in No. 6900 (Sub-No. 1) to New York, including points in New York harbor within the established lighterage limits and delivery on board vessels in New York harbor for export, to the extent that complainant paid and bore charges in excess of those contemporaneously in effect from the same points of origin to New York over other routes maintained by defendants.

The exact amount of reparation due can not be determined on the present record. Complainant should prepare a statement showing as to each shipment on which reparation is claimed the date of movement, point of origin, point of destination, route, weight, car number and initials, rate applicable, rate applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainant and verified by defendants, we will consider the entry of an order awarding reparation.

37 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 180.
RATES ON TIN CANS AND OTHER COMMODITIES BE-
TWEEN CALIFORNIA AND POINTS IN OTHER STATES.

Submitted April 5, 1915. Decided December 29, 1915.

Respondents' proposed adjustment of rates on empty carriers, returned, found just and reasonable and tariff prescribing rates in accordance therewith permitted to be filed.

W. M. Langdon for Salt Lake City Brewing Company, A. Fisher Brewing Company, Wagner Brewing Company, and Becker Brewing & Malting Company.

F. A. Jones, W. P. Geary, and A. W. Cole for Arizona Corporation Commission.

A. S. Halsted, T. J. Norton, E. W. Camp, F. H. Wood, C. W. Durbrow, Frank B. Austin, W. C. Barnes, and Allan P. Matthew for respondents.

SECOND SUPPLEMENTAL REPORT OF THE COMMISSION.

McCHORD, Chairman:

In the original report in this proceeding, 27 I. C. C., 298, it was held that item 29 of Pacific freight tariff bureau exception sheet No. 1-C, F. W. Gomph, agent, I. C. C. No. 119, providing class E rating on carload shipments of empty carriers, returned, and western classification rating on less-than-carload shipments had not been justified. No order was entered and it was said that the then rates "may be low" and permission was given respondents to establish a reasonable scale. In a supplemental report, 28 I. C. C., 247, under date of August 12, 1913, an order was entered requiring a cancellation of the item. The supplemental report concluded by saying:

The respondent may apply for a modification of such order in connection with the submission to the Commission of a scale of rates materially less than would result from the change now proposed.

Under the permission thus granted respondents have proposed special carload commodity rates generally lower than class E, and less-than-carload rates of one-half the fourth-class rating of western classification. Exceptions to this proposed general basis are: Plaster and cement bags, returned, in less-than-carload shipments, which will be accorded the outbound carload rates on plaster and cement.

respectively; empty carriers, returned, not otherwise indexed in the exception sheet, the class E rating; and, to remove fourth section violations, an amendment to the exception sheet item is proposed, making it inapplicable to local traffic of the El Paso & Southwestern system, to joint traffic between certain points on the Arizona & Eastern Railroad and on the Southern Pacific and El Paso & Southwestern to traffic moving from Phoenix, Ariz., via the Santa Fe to El Paso, Tex., and from points on the Arizona & New Mexico Railway and Morenci Southern Railroad via El Paso & Southwestern to El Paso.

The basis for the proposed carload rates on empty carriers, returned, are the rates on junk, and from a statement showing actual movement for the months of July, August, and September, 1914, over the Southern Pacific of 78 cars from representative points in Nevada, Oregon, and Arizona to the principal cities in California and to Ogden, Utah, it appears that on an average load of 9.9 tons for an average haul of 436 miles the proposed rates would yield car-mile earnings of but 13.64 cents. This car-mile earning is much less than that shown from local traffic in California for the fiscal year 1913 from asphaltum, beer, deciduous fruits, vegetables, hay, potatoes, sugar, and wool, which load an average of 16.5 tons and moved an average haul greater than the haul on empty carriers. The average car loading of the Southern Pacific system was 17.8 tons, the average haul 232 miles, and the car-mile earnings 21 cents.

Using actual movements in less than carloads the Western Pacific Railway shows that for July, 1914, the average haul on beer barrels was 320 miles, the average proposed rate $33\frac{1}{2}$ cents per 100 pounds, and applying to such traffic the proposed rates that the revenue per ton-mile would be 20.94 mills.

The terminal services connected with the transportation of empty carriers, returned, is high and the car loading less than the average. The original protestants do not object to the rates now proposed, and the Arizona Corporation Commission, one of the original protestants, after a consideration of the rates, expressed of record the opinion that such rates are fair to the shippers. Respondents agree that, where it is found that empty carriers returned are not covered by the proposed rates, proper rates will be published on request therefor.

At this hearing a representative of the breweries of Salt Lake City and Ogden, Utah, appeared to contest the rates presented by respondents. These protestants admit a special interest in the rates from Caliente, Las Vegas, and Moapa, Nev. Caliente is 324.2, Las Vegas 449.5, and Moapa 400.6 miles from Salt Lake City, and the ton-mile earnings on carload shipments from the proposed rates on empty beer packages would be, in mills, from Caliente 15.42, from Las Vegas 15.57, and from Moapa 14.97. The rate from Deeth, Nev.,

to San Francisco, Cal., a distance of 700 miles, would yield a ton-mile revenue of 7 mills, while the rate from Las Plumas, Cal., to Salt Lake City, an equal distance, would yield revenue of 11 mills per ton-mile. Similar relationships between the rates to Salt Lake City and San Francisco from other stations were shown. From none of these stations did it appear that any shipment of empty carriers returned, was made. The traffic density to Salt Lake City is less and the cost of operating greater than to San Francisco.

In principle rates should be no lower on an empty carrier, returned, than on a similar secondhand empty carrier. The return element should be disregarded. *Reduced Rates on Returned Shipments*, 19 I. C. C., 409. The application of junk rates to carload shipments was made by this Commission in *Newding v. M., K. & T. Ry. Co.*, 19 I. C. C., 29.

The carriers have complied with our suggestions in the prior reports and have presented rates which appear to be just and reasonable. Our order having expired by operation of law, no order is here necessary and the respondents are at liberty upon notice to the Interstate Commerce Commission and the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the act to regulate commerce to publish the proposed rates.

37 I. C. C.

No. 7056.

OMAHA GRAIN EXCHANGE

v.

MOBILE & OHIO RAILROAD COMPANY ET AL.

Submitted January 8, 1915. Decided December 23, 1915.

ates on blackstrap molasses from Mobile, New Orleans, and other points in Louisiana to Omaha not shown to have been unreasonable. Reparation denied.

E. P. Smith for complainant.

W. K. Vandiver for Mobile & Ohio Railroad Company.

C. E. Spens for Chicago, Burlington & Quincy Railroad Company and Texas & Pacific Railway Company.

Denegre, Leovy & Chaffe, F. H. Wood, and C. W. Owen for Morin's Louisiana & Texas Railroad and Steamship Company.

REPORT OF THE COMMISSION.

ARLAN, Commissioner:

This petition was filed in the interest of certain manufacturers of alfalfa feed at Omaha, South Omaha, and Council Bluffs. Molasses is one of the ingredients of their products; and it is for this reason that they are interested in the rates on imported and domestic blackstrap molasses from Mobile and from New Orleans and certain other points in Louisiana.

The history of the rates on blackstrap molasses moving from the points in question is sufficiently disclosed in *Louisiana Sugar Planters' Assn. v. I. C. R. R. Co.*, 31 I. C. C., 311, and in the earlier case *Molasses Rates from Mobile, Ala.*, 28 I. C. C., 666.

The complaint attacks as unreasonable and unjustly discriminatory a carload rate of 32 cents per 100 pounds charged for the transportation of imported blackstrap molasses to Omaha, in the state of Nebraska, from Mobile, in the state of Alabama, and from New Orleans, and certain other points in the state of Louisiana. Before the date of the hearing the defendants had voluntarily established a rate of 23 cents per 100 pounds on imported blackstrap molasses and 26 cents per 100 pounds on domestic blackstrap molasses from these points of origin to Omaha; and shortly after the case was submitted these rates were still further voluntarily reduced to 19 cents and 22 cents, respectively, which adjustment we are advised is satisfactory to
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the complainant so far as the future is concerned. The claim for reparation is the only question, therefore, before us.

Upon this record the rate of 32 cents is not shown to have been unreasonable or unjustly discriminatory. As we have repeatedly held, the voluntary reduction of a rate by the carriers is not of itself sufficient evidence that the prior rate was unreasonable. It follows, therefore, that the prayer for reparation must be denied. An order dismissing the complaint will be entered.



INVESTIGATION AND SUSPENSION DOCKET No. 402.

WESTBOUND TRANSCONTINENTAL RATES ON BUCKWHEAT AND CORN FLOUR.

Submitted September 30, 1915. Decided December 20, 1915.

On rehearing, found that for the future no higher rates should be maintained by respondents on buckwheat flour or corn flour in carloads from producing points in transcontinental groups A to J, inclusive, to California terminals and intermediate points than are contemporaneously maintained on wheat flour in carloads from and to the same points.

F. E. Andrews and *D. L. Meyers* for Atchison, Topeka & Santa Fe Railway Company and Southern Pacific Company.

H. G. Krake for Commerce Club of St. Joseph, Mo.

W. D. Kerr for other protestants.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

This case involves the question of reasonable rates for the transportation of buckwheat flour and corn flour in carloads from producing points in transcontinental groups A to J, inclusive, comprising territory between Denver and the Atlantic seaboard, to California terminals and intermediate points in California and other states. Our original report was rendered November 9, 1914, unreported. We found therein that the rates on buckwheat flour and corn flour from and to the points involved might be a differential of 10 cents per 100 pounds higher than the rates contemporaneously in effect on wheat flour. Rates were published on this basis, but on June 7, 1915, at the request of buckwheat flour interests hereinafter called protestants, a rehearing was granted.

Respondents' current tariffs still name the blanket rate of 90 cents, minimum 24,000 pounds, referred to in our original report on buckwheat flour, corn flour, and other commodities from groups A to J, inclusive. Also there are rates named on buckwheat and corn flours from groups D, E, F, and G, subject to a minimum of 50,000 pounds, as follows: 90 cents per 100 pounds from groups D and E; 85 cents from group F, excluding Missouri River crossings; 75 cents from group G and Missouri River crossings. The present rate on wheat flour from groups D and E is 80 cents, 10 cents under the rate on the commodities involved. No differential is maintained from group G and Missouri River crossings because of the increase from 65 cents to 75 cents effected in the rate on wheat flour since our original report herein, as permitted in *Kansas-California Flour Rates*, 32 I. C. C., 602.

Facts are now presented which were not presented at the original hearing and material corrections have been made. The carriers' testimony also has been modified to some extent.

The carriers were actively opposed at the original hearing by pancake-flour interests of St. Joseph, Mo. It appeared that there was no appreciable movement of buckwheat flour or corn flour, in straight carloads, from any eastern point to California terminals, and the carriers stated that both articles were included in the item naming the rate on wheat flour merely to take care of an occasional mixed shipment of the buckwheat flour and corn flour and wheat flour. It now appears that the principal buckwheat producing states are New York and Pennsylvania, that the remainder of the annual crop is produced in Ohio, Indiana, Michigan, and Wisconsin, and that no buckwheat or buckwheat flour has moved from St. Joseph to California terminals. It is stated also that during 18 months in the 1912-13 and 1914-15 seasons 40 cars of buckwheat flour and 13 mixed carloads moved from eastern points to California terminals, and that a normal adjustment would rate wheat flour, buckwheat flour, and corn flour the same. The carriers' case at the original hearing was based largely on the theory that the rates on wheat flour were depressed by water competition and that buckwheat flour and corn flour were not subject to water competition. But it appears now that a number of protestants' shipments moved from the eastern points to California points through the Panama Canal, and the carriers now admit that the alleged normal adjustment should obtain. The existing parity in the rates from Missouri River crossings is cited by respondents.

Protestants state that no higher rates have been charged on buckwheat flour than on wheat flour in central freight association territory or in trunk line territory or in the territory west of the Missis-

Mississippi River except on transcontinental traffic since our decision in the *Davis Milling Co. case*, Docket 5061, unreported, referred to in our original report, where we held that pancake flour should take no higher rates than buckwheat flour or corn flour. The petition for a rehearing in the instant case included a petition to rehear the *Davis Milling Co. case*, but that part of the petition was denied, the petitioners not having been parties to that case. Upon the Commission's own motion, however, the case will now be reopened. Respondents and protestants both erroneously assumed at the hearing herein that rates on pancake flour were involved and adduced evidence on that assumption.

Rye flour takes the same rates as wheat flour, and certain of the protestants state that they have been doing considerable business in mixed carload shipments of buckwheat flour and rye flour to California terminals. With rates on buckwheat flour in excess of the rates on rye flour such shipments can be made only upon payment of the less-than-carload rates applicable to the commodities mixed. Protestants also show that buckwheat flour moving to California terminals, although shipped in 125-pound cotton sacks and loaded 400 sacks to the car, pays the same rate from certain territory, including group D and E territory, 90 cents, as cereals and cereal products shipped in small packages.

We find upon all of the facts now before us that for the future no higher rates should be maintained by respondents on buckwheat flour or corn flour in carloads from and to the points involved than are contemporaneously maintained on wheat flour in carloads from and to the same points, and an order to that effect will be entered.

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1. Rates on sugar beets from Indiana points to Decatur, Ind., applicable on interstate traffic, were carried forward in the schedule under suspension without increase. Order of suspension vacated.
2. Proposed increased rates on sugar beets from Lima, Kemp, Spencerville, Elgin, Ohio City, Glenmore, and Wren, Ohio, to Decatur, Ind., not justified.
3. Authority granted to establish rates on sugar beets not in excess of 53 cents per net ton from Lima, Kemp, and Spencerville to Decatur.

T. H. Burgess for respondents.

J. J. Van Putten, jr., for protestant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

An item in Erie Railroad tariff I. C. C. No. A-5270, filed to take effect May 15, 1915, proposed to increase the rates on sugar beets from points in Ohio to Decatur, Ind. Upon protest by the Holland-St. Louis Sugar Company, engaged in the manufacture of sugar at Holland and St. Louis, Mich., and Decatur, Ind., hereinafter called protestant, the item was suspended until September 12, 1915, and later until March 12, 1916.

Protestant has operated a sugar-manufacturing plant at Decatur since 1912. It is the only consumer of sugar beets in the territory adjacent to Decatur. Sugar beets are classified fifth class in official classification territory, but the carriers in central freight association territory have established a uniform mileage scale of rates applicable to the traffic, ranging from 25 per cent to 40 per cent of the fifth-class rates, and sugar beets generally move on that basis. Prior to October 26, 1914, the intrastate rates on sugar beets in Indiana and Michigan were on the same mileage scale basis as the interstate rates. On October 26, 1914, the interstate rates were increased 5 per cent, but the carriers were not permitted to increase the intrastate rates. The rates from Indiana points to Decatur, applicable on interstate traffic, are carried forward in the schedule here involved without further increase, and our order as to them will therefore be vacated. There is no movement of sugar beets

under the present interstate rates from Indiana points to Decatur. The present and proposed rates in cents per ton from the Ohio points involved to Decatur, with distances and rates based on the mileage scale described, are as follows:

From—	Distance.	Present rate. ¹	Mileage scale basis. ²	Proposed rate.	Proposed increase.
Lima.....	44	42	53	60	15
Kemp.....	38	42	53	60	15
Spencerville.....	31	42	53	60	15
Elgin.....	24	42	42	50	8
Ohio City.....	17	42	42	50	8
Glenmore.....	13	42	42	50	8
Wren.....	8	42	42	47	5

¹ Subsequent to increase of 5 per cent.

² Advanced 5 per cent.

The present rates from Elgin, Ohio City, Glenmore, and Wren are on the mileage scale basis. The rates from Lima, Kemp, and Spencerville are 11 cents less than the mileage scale basis.

Respondents contend that the present rates are not remunerative. During the season of 1914 the Erie moved no shipments of sugar beets from Lima, Kemp, or Spencerville to Decatur, and only 120 cars from Elgin, Ohio City, Glenmore, and Wren. The shipments moved occupied the Erie's rails a total of 1,020 days. The earnings per loaded car per day varied from 65 cents on the traffic from Wren to \$1.62 on the traffic from Glenmore. The average earnings per loaded car per day were \$1.29. Protestant's factory is located on the rails of the Grand Rapids & Indiana Railway at Decatur. If the time the cars occupied the Grand Rapids & Indiana rails were added to the time the Erie's rails were occupied, the average earnings per loaded car per day would be \$1.03. Respondents compare these earnings with average earnings of \$2.32 per car per day for July, 1914, for 171 carriers reporting to the American Railway Association and \$2.48 per car per day for the Erie during the same month. The latter figures include the loaded and empty car movement. If only the revenue derived from the loaded car movement were considered, the averages shown would be considerably higher.

The average rate per ton-mile, based on the present rates from the Ohio points involved, is 2.3 cents. From an exhibit offered by respondents it appears that the average rate per ton-mile on a number of commodities, including grain and grain products, petroleum, pig and bloom iron, iron and steel articles, brick, lumber, anthracite coal, lime, scrap iron and scrap steel, and salt, handled by respondents in this territory varies from 7.85 cents for distances from 6 miles to 10 miles to 2.39 cents for distances from 41 miles to 50 miles.

The movement of sugar beets is confined to the months of October and November. Respondents refer to the car congestion at Decatur during the sugar-beet season, and assert that it results in expensive interchange operation and interferes with the handling of other freight at that point. The Grand Rapids & Indiana and the Toledo, St. Louis & Western railways, which also serve Decatur, apply the regular beet-sugar mileage scale from points on their lines to Decatur.

We find that respondents have not justified the proposed increased rates as reasonable maxima from the Ohio points of origin. Some increase might properly be made in the rates from Lima, Kemp, and Spencerville, Ohio. Respondents will be required to cancel that portion of the tariff item under suspension in so far as it covers rates from Lima, Kemp, Spencerville, Elgin, Ohio City, Glenmore, and Wren, Ohio, but upon statutory notice may file rates from Lima, Kemp, and Spencerville to Decatur not to exceed 53 cents per ton.

An order will be entered accordingly.

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INVESTIGATION AND SUSPENSION DOCKET No. 638.
FABRICATION IN TRANSIT AT GREENVILLE, PA.

Submitted August 31, 1915. Decided December 20, 1915.

Proposed restriction of fabrication-in-transit service at Rochester, Ind., and Greenville, Pa., to iron and steel articles intended for framework or sections for bridges or buildings found to have been justified. Order suspending operation of tariff vacated.

M. B. Pierce for Erie Railroad Company.

J. T. Johnston for Pennsylvania Company.

G. T. Horton and *S. A. Poyer* for protestant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules filed to take effect May 15, 1915, respondents Erie Railroad and Chicago & Erie Railroad companies proposed to restrict fabrication-in-transit service at Rochester, Ind., and Greenville, Pa., to 14 iron and steel articles fabricated there into "framework or sections for bridges or buildings." Upon protest filed by the Chicago Bridge & Iron Works, of Chicago, Ill., which has a plant at Greenville, the schedules were suspended until September 12, 1915, and later until March 12, 1916.

Fabrication in transit is accorded on respondents' lines only at Rochester and Greenville. Since the service was established at Rochester, in 1909, the arrangement has applied exclusively to bridge and building material, and no protest is made by industries at Rochester to the operation of the schedules under suspension.

In 1910 protestant established a plant at Greenville, 91 miles northeast of Pittsburgh, Pa., for the purpose of developing its business in water tanks and structural steel throughout the eastern section of the country, and respondents published a tariff according fabrication-in-transit service at that point. Protestant receives iron and steel articles at Greenville from Pittsburgh, fabricates them into tower and tank material, and forwards them at the balance of the through rate from point of origin to destination, plus the prescribed charge of 1½ cents per 100 pounds for the service.

The propriety of fabrication-in-transit service in central freight association territory was considered in *Fabrication-in-Transit Charges*, 29 I. C. C., 70. We found that in the absence of some persuasive reason it would be undesirable to extend the service to

include structures other than bridges or buildings, and recommended the publication by all of the respondent carriers in that territory of a uniform list restricted to iron and steel articles to be used in fabricating sections of bridges and buildings. The schedules under suspension were published in accordance with this recommendation, and embody rules, regulations, and charges uniformly published by other carriers in the same general territory.

Protestant obtains its materials from Pittsburgh, and the effect of the proposed schedules would be to withdraw the arrangement for stopping its shipments at Greenville accorded by the broad and general provisions of the existing schedules and to apply the Greenville combinations of rates on shipments to eastern markets, which are from 3.7 cents to 7.3 cents higher than the present joint rates. Tank and tower material is said to be identical with the material used in the construction of bridges and buildings and to be fabricated in the same manner. Protestant contends that the proposed schedules will unduly prefer its principal competitor located at Pittsburgh, and suggests that the suspended schedules should be amended to include iron and steel articles to be fabricated into towers, tanks, riveted piping, stacks, and hoppers in order to prevent this discrimination. None of protestant's competitors in the tower and tank business in central freight association territory are accorded fabrication-in-transit service, and materials used in the construction of tanks and towers are not competitive with the materials used for bridges and buildings.

We find that respondents have justified the propriety of the proposed schedules, and an order will be entered vacating the orders of suspension.

87 L. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 663. **STONE TO DES MOINES, IOWA.**

Submitted September 7, 1915. Decided December 20, 1915.

Proposed increased rates on stone of all kinds, rough or dressed, not lettered or figured, from the twin cities to Des Moines, Iowa, found to have been justified for dressed stone but not for rough stone.

M. W. Loveland for Drake Marble & Tile Company, protestant.
F. B. Townsend for respondents.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This proceeding involves the commodity rate of 8 cents per 100 pounds on stone of all kinds, rough or dressed, not lettered or figured, in carloads, from Minneapolis, Minnesota Transfer, and St. Paul, Minn., to Des Moines, Iowa. Tariff schedules filed to take effect July 1, 1915, proposed to restrict the application of the present rate to crushed stone and to increase the commodity rate to 10 cents per 100 pounds on other kinds of stone. The rates are subject to a minimum of 90 per cent of the marked capacity of the car, but not less than 40,000 pounds. Upon protest of the Drake Marble & Tile Company, located at St. Paul, the schedules were suspended until April 29, 1916.

It was testified for respondents that the proposed increase is intended to remove the departures from the long-and-short-haul rule of the fourth section which exist under the present rate adjustment, and to align the rate involved with the general structure of rates between Minnesota and Iowa points. The following table was filed as an exhibit to show the relationship now maintained:

To—	From—	Distance.	Rate per 100 pounds.	Rate per ton-mile.
		<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>
Cedar Rapids, Iowa.....	St. Paul, Minn.....	255	10	7.84
Do.....	New Ulm, Minn.....	273	11.25	8.26
Do.....	Mankato, Minn.....	247	10	8.20
Des Moines, Iowa.....	St. Paul, Minn.....	258	8	6.20
Do.....	New Ulm, Minn.....	269	10.5	8.67
Do.....	Mankato, Minn.....	210	9.75	8.26
Ottumwa, Iowa.....	St. Paul, Minn.....	340	10	8.56
Do.....	New Ulm, Minn.....	338	15	8.57
Do.....	Mankato, Minn.....	378	10	8.23
Marshalltown, Iowa.....	St. Paul, Minn.....	244	10	8.20
Do.....	New Ulm, Minn.....	237	10.5	8.66
Do.....	Mankato, Minn.....	211	9.75	8.26
Fort Dodge, Iowa.....	St. Paul, Minn.....	211	8	7.58
Do.....	New Ulm, Minn.....	172	8.5	8.26
Do.....	Mankato, Minn.....	181		
Waterloo, Iowa.....	St. Paul, Minn.....	232	10	8.56
Do.....	New Ulm, Minn.....	234		
Do.....	Mankato, Minn.....	175	10	11.26
Omaha, Nebr.....	St. Paul, Minn.....	342	11	8.45
Council Bluffs, Iowa.....	New Ulm, Minn.....	305	11	7.21
Do.....	Mankato, Minn.....	280	11	7.86

A number of rates on stone and other commodities from Minnesota to destinations in Iowa and other states were cited by protestant which earn considerably less per car-mile on an average than the rate proposed to be increased.

Protestant advised respondents by letter dated March 27, 1915, that several carloads of stone had been sold at Waterloo, Iowa, a point intermediate to Des Moines via the Chicago Great Western Railroad, and requested that the Des Moines rate be made applicable to this intermediate point, as the rate in effect was higher than the Des Moines rate. Protestant erroneously assumed that the rate to Waterloo could be reduced under rule 77 of the Commission's Tariff Circular 18-A. Rule 77 could not be applied because a commodity rate was published to Waterloo and protestant's request was denied.

Protestant insists that respondents are attempting to increase the rate to Des Moines in order to avoid reducing the rates to intermediate points. In *Rates Between Shreveport and Texarkana*, 32 I. C. C., 180-182, we said:

At the outset it should be stated that the reasonableness of the proposed increases can not be established by pointing to the fourth section violations which are thereby obviated.

In *Rates on Stone and Marble from Chicago and Peoria*, 34 I. C. C., 390, the carriers proposed to increase rates on stone and marble, not polished, lettered, or figured, from Chicago and Peoria, Ill., to St. Paul, Minn., from 8 cents to 10 cents per 100 pounds, and we found that the proposed increased rates were justified for stone and marble sawed or dressed, but not for rough stone and marble. The short-line distance from Chicago to St. Paul is 398 miles; the short-line distance from St. Paul to Des Moines, 258 miles. The testimony here confirms our finding in that case.

We find that the respondents have not justified the increased rate involved on rough stone, but have justified the rates proposed on dressed stone. An order will be entered requiring the cancellation of the proposed increased rate on rough stone, and vacating the order of suspension as to the rates on dressed stone.

INVESTIGATION AND SUSPENSION DOCKET No. 671.
FERROMANGANESE TO WESTERN POINTS.

Submitted November 15, 1915. Decided December 20, 1915.

Proposed withdrawal of import rates on ferromanganese from eastern ports to central freight association territory found to be justified. Suspension orders vacated.

Henry Wolf Bicklé for Pennsylvania Railroad Company; Philadelphia, Baltimore & Washington Railroad Company; West Jersey & Seashore Railroad Company; and Baltimore & Sparrow's Point Railroad Company.

S. H. Tolles for Baltimore & Ohio Railroad Company.

D. G. Gray for Western Maryland Railway Company.

G. M. Freer for protestants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Respondents proposed by tariffs filed to take effect July 1, 1915, to cancel joint import carload commodity rates on ferromanganese from eastern ports to points in central freight association territory, excluding Pittsburgh and related points, thereby rendering applicable the higher domestic rates. Upon protests filed by iron and steel manufacturers at Portsmouth and Youngstown, Ohio, and Detroit, Mich., the tariffs were suspended until October 29, 1915, and later until April 29, 1916. Increased rates subsequently were proposed to Pittsburgh also, but the tariffs proposing them have been voluntarily canceled pending the determination of this proceeding. The present import rates per gross ton from Baltimore, Md., which is a typical port, are: \$2.64 to Youngstown; \$3.18 to Detroit; \$3.62 to Portsmouth; \$2.30 to Pittsburgh. The rates which are now applicable on domestic traffic are: \$2.92 to Youngstown; \$3.50 to Detroit; \$3.98 to Portsmouth; \$2.46 to Pittsburgh.

Ferromanganese is produced from manganese ore and is essential to the open-hearth process for making steel. It is shipped in bars resembling pig iron, and at present is worth from \$100 to \$120 per ton. Before the European war the price is said to have ranged from \$35 to \$50 per ton. Domestic ferromanganese is on respondents' billet list, which comprises muck bars, puddle bars, sheet bars, billets, etc. The rates on these articles to points west of Pittsburgh and Buffalo are made on the usual basis of percentages of the rates from New York to Chicago, and the rates from Philadelphia and Baltimore are differentials of 2 cents and 3 cents per 100 pounds, respectively, under the rates from New York. To Pittsburgh the rates

from Philadelphia and Baltimore are differentials of 1 cent and 1½ cents per 100 pounds, respectively, under the rates from New York. Domestic rates have been made on this basis since 1901. Import rates on ferromanganese constructed on the same percentage basis as the domestic rates were first established in 1902 for competitive reasons and to assist steel manufacturers. They have evidently not been satisfactory to the carriers, as they have twice been canceled. Each time they were restored, but upon a higher level. The instant attempt to cancel them is attributed to respondents' desire to eliminate import rates generally. Import rates have been canceled on a number of commodities, including spiegeleisen and ferrosilicon. Respondents contend that the present rates on imported ferromanganese are unreasonably low as compared with the domestic rates, showing that ferromanganese is more valuable than other articles included in the billet list described. Protestants' objection to the proposed rates is largely one of discrimination, particularly the discrimination attributed to the continuance of import rates to Pittsburgh. Protestants were not aware when they protested that respondents also intended to cancel the import rates to Pittsburgh.

The evidence adduced relates principally to the relationship between the rates on ferromanganese and on imported manganese ore. Import rates on the ore from Baltimore are: \$1.58 per ton to Pittsburgh; \$2.08 to Youngstown; \$2.88 to Portsmouth. And protestants argue that an increase in the difference between the rates on imported ferromanganese and on imported manganese ore would discriminate against the small independent operator who is compelled to buy ferromanganese in favor of the large plants which can import the ore and manufacture their own ferromanganese. The domestic production of manganese ore is insignificant so far as the steel industry is concerned. Practically all of the ferromanganese used in the manufacture of steel must be imported or extracted from imported ore. Figures produced by protestants show that from 1910 to 1914 about 100,000 tons of ferromanganese were imported and that 99,000 tons were extracted here from imported ore. The reduction of manganese ore is an expensive operation, and the smaller domestic operators can not afford it. Protestants state that nearly all of the ferromanganese produced by the large steel companies is also consumed by them and that protestants therefore depend largely upon the imported article. It is not urged that the rates on ferromanganese and on manganese ore should be the same; merely that the present difference between the rates should not be increased.

We are not convinced that the proposed cancellations would result in unjust discrimination, and find that respondents have justified the increased rates which they entail. Our orders of suspension therefore will be vacated.

No. 5549.

**STEARNS & CULVER LUMBER COMPANY, FOR THE
ACCOUNT AND USE OF BAGDAD LAND & LUMBER
COMPANY,**

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL

Submitted July 3, 1915. Decided December 20, 1915.

Charges collected for the transportation of one locomotive, not under steam, on its own wheels, from Erie, Pa., to Pensacola, Fla., reconsigned to Milton, Fla., not shown to have been unreasonable. Complaint dismissed.

J. S. George and J. S. Bolton for complainant.

William Burger for Louisville & Nashville Railroad Company.

F. W. Flott for New York Central Railroad Company and Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, Stearns & Culver Lumber Company, was a corporation engaged in the lumber business with a place of business at Milton, Fla. The Bagdad Land & Lumber Company, a similar corporation, with an office at the same place, is complainant's successor in interest and the sole owner of its assets. By complaint, filed March 25, 1915, complainant alleges that the charges collected by defendants for the transportation of one locomotive, not under steam, on its own wheels, shipped February 10, 1911, from Erie, Pa., to Pensacola, Fla., and reconsigned to Milton, were unreasonable and unjustly discriminatory in violation of sections 1, 2, 3, and 4 of the act. Reparation is asked. The shipment was delivered February 22, 1911, and formal complaint was filed February 17, 1913. The complaint was amended April 26, 1913, and on July 16, 1913, was dismissed on complainant's motion. Following the amended complaint, filed March 25, 1915, the case was reopened April 1, 1915.

The shipment weighed 101,500 pounds, and was moved by the Lake Shore & Michigan Southern Railway and the Cleveland, Cincinnati, Chicago & St. Louis Railway to Louisville, Ky., and by the Louisville & Nashville Railroad thence to Pensacola. The day after its arrival at Pensacola complainant directed its reconsignment to Milton, and the Louisville & Nashville moved it to Milton. No joint

through rate was in effect and charges were collected in the sum of \$373.70, based on the fifth-class rate of 18 cents per 100 pounds and 50 per cent of actual weight, prescribed by the official classification, from Erie to Louisville, a charge of 35 cents per mile for 654 miles from Louisville to Pensacola; a charge of 35 cents per mile, the rate for a minimum distance of 75 miles, from Pensacola to Milton; and the first-class fare for an attendant.

The complaint of March 25, 1915, erroneously assumed that a joint fifth-class rate of 43 cents per 100 pounds was applicable from Erie to Pensacola, and therefore alleged a violation of the aggregates of intermediate rates provision of section 4 of the act. But complainant withdrew the allegations involving sections 2, 3, and 4 of the act at the hearing and amended its complaint accordingly. The only allegation pressed was the allegation that the charges collected were unreasonable to the extent that they exceeded the charges that would have accrued at a suggested rate of \$6.41 per ton applied to the gross weight, which rate is computed on the per ton-mile basis prescribed in *Rates on Locomotives and Tenders*, 21 I. C. C., 103, which involved increased rates on locomotives and tenders. The reasonableness of the fare of the attendant is not attacked.

The case cited involved items in the southern classification only. No carriers in official classification territory were parties defendant, and the rates prescribed did not become effective until after the shipment in controversy had moved. The charges assailed were lawfully applicable, and we find that they are not shown to have been unreasonable.

An order will be entered dismissing the complaint.

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No. 6212.
OMAHA PACKING COMPANY
v.
**CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COM-
PANY ET AL.**

Submitted March 10, 1915. Decided December 20, 1915.

Between January 12, 1913, and April 6, 1913, the rate charged for the transportation of live hogs, in carloads, from points in Iowa on the Chicago, Milwaukee & St. Paul Railway to complainant's plant at Chicago, Ill., was the Chicago rate plus a \$8 switching charge imposed by the Chicago, Burlington & Quincy Railroad. On April 6, 1913, the Milwaukee provided for the absorption of \$4 of the switching charge, which provision is still in effect; *Held*, That the present rate to complainant's plant is just and reasonable, but that the previous rate was unreasonable. Reparation awarded on the basis of the present rate.

*F. H. Frederick, Maurice Weigle, R. O'Hara, Albert H. and Henry Veeder, R. C. McManus, and R. D. Rynder for complainant.
R. B. Scott, O. W. Dynes, and J. N. Davis for defendants.*

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the meat-packing business at Chicago, Ill. By complaint, filed October 9, 1913, as amended June 4, 1914, and September 16, 1914, it alleges that defendants' rates for the transportation of hogs in carloads from points in Iowa to complainant's plant in Chicago are unreasonable and unjustly discriminatory. Reparation is asked.

Complainant's plant is served by the Chicago, Burlington & Quincy Railroad, hereinafter called the Burlington, and is located about 3 miles north of the Union Stock Yards in Chicago. The points of origin involved are served by the Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee. Cars arriving in Chicago over the Milwaukee consigned to complainant are delivered to the Burlington at its Western avenue yards, and switched thence to complainant's plant, a distance of about 2.5 miles. Prior to August 1, 1911, the Burlington imposed a switching charge of \$4 per car, which was absorbed by the Milwaukee. On August 1, 1911, the Burlington increased its charge to 1½ cents per 100 pounds, subject to a minimum of 60,000 pounds, or \$9 per car, which charge

also was absorbed by the Milwaukee pursuant to the so-called Lowrey agreement. On January 2, 1912, the \$9 switching charge was reduced to \$6. The Milwaukee continued to absorb the charge until January 12, 1913, when it ceased to do so. On April 6, 1913, the Milwaukee provided for the absorption of \$4 of the switching charge, leaving \$2 per car to be paid by the shipper.

The complaint involves 63 shipments moved from Preston, Lyons, Sabula, Morley, Anamosa, and Tama, Iowa, between January 13, 1913, and April 3, 1913, on which charges were collected at the Chicago rate, plus the Burlington's \$6 switching charge. The complaint originally asked reparation on the basis of the Chicago rate plus \$2 per car for switching, but as finally amended, attacks the through rate from Iowa points to complainant's plant and asks reparation on the basis of the Chicago rate. As the rates assailed were increased subsequently to January 1, 1910, defendants must justify them.

The rates involved to Chicago range from 15.8 cents for 140.9 miles to 21 cents for 280.7 miles, averaging 17.5 cents for 195.4 miles. The ton-mile earnings range from 1.5 cents to 2.2 cents, averaging 1.85 cents. The Milwaukee asserts that these rates were established in conformity with the decisions rendered in *Corn Belt Meat Producers' Asso. v. C., B. & Q. Ry. Co.*, 14 I. C. C., 376, and 17 I. C. C., 533, which involved the rates on cattle and hogs from Iowa to Chicago and show that they compare favorably with the rates on hogs for about the same distances from points in Iowa to various other packing centers, such as St Paul, Minn; South Omaha, Nebr.; Sioux City, Iowa; and Kansas City, Mo. A terminal charge of \$2 per car over the Chicago rate has been in effect for many years on shipments of live stock from points in Iowa to the Chicago Union Stock Yards, which was approved in *Interstate Comm. Comm. v. C., B. & Q. R. R. Co.*, 186 U. S., 320, and which we recognized when we fixed the line-haul rates from Iowa to Chicago in the supplemental proceedings in *Corn Belt Meat Producers' Asso., supra*. The Milwaukee asserts that its purpose in absorbing all but \$2 of the Burlington's switching charge was to place complainant's plant on the same basis as its competitors in the stockyards. The assertion is made also that the Milwaukee never intended to absorb all of the Burlington's switching charges and that the tariff provision under which it did so from August 1, 1911, to January 12, 1913, was published by mistake. Delivery to complainant is said to be more expensive than delivery to the stockyards. Live stock brought to Chicago by the Milwaukee for the stockyards generally moves in trainloads, the trains generally being run into the yards by the line train crews, under a trackage arrangement with other lines. Shipments to complainant's plant usually consist of only a few cars, fre-

quently of only one car, and require prompt and expedited service through the heart of Chicago's congested industrial district. For these reasons, and to avoid discrimination against complainant's competitors in the stockyards district, defendants contend that the \$2 charge in addition to the line-haul rate is justified. No attempt is made to justify charging complainant the entire \$6 charge imposed by the Burlington on the shipments involved. On the contrary defendants express willingness to make reparation on these shipments on the basis of the Chicago rate, plus \$2 per car for switching.

Complainant formally assails the total rate and both components, but apparently does not contend seriously that the line-haul rate to Chicago is unreasonable. Complainant's real contention is epitomized by counsel as follows:

Our contention in this case, the only one we have, is that we have been treated as though the plant were in the Union Stock Yards, although it is not there.

Defendants pay for the unloading and weighing of stock in the stockyards, while complainant performs this service for itself.

Under the reciprocal switching arrangement provided by the Lowrey tariffs for all traffic to Chicago except live stock and a few other commodities excepted by various roads, all of the products from packing plants on the Milwaukee in Iowa can move to points in Chicago at the Chicago rate. Live hogs shipped to complainant's plant pay \$2 more, and complainant conceives that the Lowrey tariff arrangement should apply equally to live stock. The stockyards are situated on a switching road that can not participate in reciprocal switching, while complainant's plant is located on the rails of a line carrier which serves 302 industries in Chicago. The Milwaukee serves 307 industries, and complainant urges that this is an ideal situation for the application of the Lowrey tariff arrangement.

The operation of the Lowrey tariff has been considered in a number of cases. In *Rates on Hay to Chicago*, 34 I. C. C., 150, we said, at page 152:

The Lowrey tariff arose as a voluntary agreement between the carriers. It was not originated by operation of law, nor was it the result of any form of adjudication or of any order of the Commission, or of any other agency of the government.

In *Board of Trade of Chicago v. A., T. & S. F. Ry. Co.*, 29 I. C. C., 438, which involved the absorption of switching charges under the Lowrey arrangement, we held that the failure of the carriers defendant therein to absorb the switching charges on grain delivered to Chicago industries off of their lines while absorbing such charges in the cases of other commodities does not constitute unlawful discrimination.

We find upon all of the facts disclosed that the rates from the points of origin involved to complainant's plant, composed of the rates to Chicago and a charge of \$2 per car for delivery, are just and reasonable, and as these rates have been in effect for more than two years, no order for the future is necessary.

We further find, however, that the rates actually charged on the shipments involved were unreasonable to the extent that they exceeded the rates to Chicago and charge of \$2 per car herein found just and reasonable; that complainant made the shipments as described and paid and bore charges thereon at the rates herein found unreasonable; that it has been damaged to the extent of the difference between the charges collected and the charges that would have accrued at the rates herein found reasonable, and that it is entitled to reparation with interest.

The exact amount of reparation due can not be determined on the present record. Complainant accordingly should prepare a statement showing as to each shipment on which reparation is claimed the date of shipment, points of origin and destination, route, weight, car number and initials, rate applied, charges paid, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainant and verified by the defendants we will consider further issuing an order awarding reparation.

87 I. C. C.

No. 6378.
HOTTELET & COMPANY
v.
CHESAPEAKE & OHIO RAILWAY COMPANY ET AL

PART OF FOURTH SECTION APPLICATION No. 1548.

Submitted June 16, 1914. Decided December 20, 1915.

1. Rates charged for the transportation of brewers' dried grains in carloads from Louisville, Ky., to Manassas and Nokesville, Va., found not unreasonable. Complaint dismissed.
2. Fourth section question involved decided in *Class and Commodity Rates from Louisville*, 36 I. C. C., 317.

Max Hottelet and G. A. Schroeder for complainant.

R. Walton Moore and C. J. Rixey, jr., for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are Max Hottelet and Ernst E. Hottelet, copartners, engaged in the dairy feed business at Milwaukee, Wis., under the firm name of Hottelet & Company. By complaint, filed December 1, 1913, they allege that the rate charged by defendants for the transportation of four carloads of brewers' dried grains from Louisville, Ky., to Manassas, Va., shipped July 29, August 8, September 6, and September 18, 1913, respectively, was unreasonable, unjustly discriminatory, and in violation of the long-and-short-haul rule of the fourth section of the act. Reparation is asked. A car shipped to Nokesville, Va., September 13, 1913, was added at the hearing.

The shipments moved over the Chesapeake & Ohio Railway to Orange, Va., thence over the Southern Railway to destination, at 22½ cents per 100 pounds, for which there was no tariff authority. The rates applicable were 21 cents to Manassas, 20 cents to Nokesville, composed of the Chesapeake & Ohio's 12-cent rate to Orange and Southern Railway locals of 9 cents to Manassas and 8 cents to Nokesville, so that all the shipments were overcharged.

Manassas is on the Washington division of the Southern Railway, 26 miles south of Alexandria, Va., and 52 miles north of Orange. Nokesville is on the same division, 7 miles south of Manassas. The

Chesapeake & Ohio operates to Washington over the tracks of the Southern Railway from Orange, but does not handle traffic to the local points on the Southern Railway. A rate of 14½ cents applied to Washington and Alexandria, lower than to Manassas and Nokesville, intermediate points served by the Southern Railway. That portion of the Southern Railway's Fourth Section Application No. 1548, which covers the long-and-short-haul rule departure thus involved, was heard with the complaint. No evidence was offered to prove the rates assailed unreasonable or unjustly discriminatory except the protected departure from the long-and-short-haul rule.

The above fourth section application was subsequently set down for hearing, with others, and, on a much broader record, involving class and commodity rates from Louisville and Cincinnati to Alexandria, was denied. *Class and Commodity Rates from Louisville*, 36 I. C. C., 317. We need, therefore, enter no fourth section order in this case.

We find that the rates assailed are not shown to be unreasonable, but that the shipments were overcharged, as described. The exact amount of charges paid on the last two shipments involved is disputed, and can not be determined from the copies of freight bills filed. Refund in the proper amount should be made promptly. If this is not done, complainant may bring the matter to our attention.

An order will be entered dismissing the complaint.

37 I. C. C.

No. 6567.
HYGIENIC ICE COMPANY
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL

Submitted August 3, 1914. Decided December 20, 1915.

Complainant seeks reparation on certain carload shipments of ice from Wisconsin points to various delivery stations in the Chicago, Ill., switching district in the full amount of switching charges imposed over and above the flat Chicago rate; *Held:*

1. That the statute of limitations has run against claims for any amounts in excess of \$3 per car, the amount claimed on the informal docket.
2. That complainant, the owner of the property transported, is the one who has been damaged by paying and finally bearing the transportation charges found to be unreasonable and discriminatory and the one entitled to reparation.
3. Shippers may not be heard to demand redress from the carriers for commercial losses, assumed for the purpose of equalizing transportation costs.

W. E. McCornack and H. J. Aaron for complainant.

J. S. Burchmore and L. M. Walter for intervener.

C. C. Wright and R. H. Widdicombe for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the ice business at Chicago, Ill. By complaint, filed February 5, 1914, it alleges that the charges imposed by defendants for the transportation of approximately 800 carload shipments of ice from Salem and Twin Lakes, Wis., to various delivery stations within the Chicago switching district during the period from February 25 to October 7, 1911, were unreasonable and unjustly discriminatory. Reparation is asked. An informal claim was filed July 5, 1912.

Salem and Twin Lakes are local stations on the Chicago & North Western Railway, hereinafter called the North Western. The rate on ice from both points to Chicago during the period involved was 3 cents per 100 pounds plus switching charges from the terminus of the North Western to the ultimate delivery points. The switching charges varied from \$2.50 to \$11.25 per car. The complaint puts in issue the total charges, but really is directed against that part of the total which consists of the switching charges, which complainant contends should have been absorbed by the North Western. L. C.

Tewes, an ice dealer and shipper at Salem, Wis., who sold and was consignor of upward of 500 carloads of the ice involved, intervened at the hearing, asserting himself to be the one damaged as to such shipments and the one entitled to reparation in the amount of \$3 per car. Certain undercharges are outstanding against complainant for intermediate switching in Chicago, which are included in the total reparation sought.

Complainant avers that during 1910 the North Western absorbed all switching charges on ice at Chicago. The North Western denies the statement, asserting that its line-haul tariffs at that time bore no proper reference to its absorption tariffs and that no authority existed for the absorptions alleged. This question however is unimportant for the purposes of this proceeding.

By tariff effective February 25, 1911, the North Western provided for the addition of all switching charges at Chicago on all commodities upon which the line-haul rate to or from Chicago was less than $3\frac{1}{2}$ cents per 100 pounds. This tariff was canceled August 1, 1911, when the so-called Lowrey tariff providing reciprocal switching arrangements in Chicago took effect. Under the Lowrey tariff the flat Chicago rate was applied to all traffic on which the rate to or from Chicago was $2\frac{1}{2}$ cents per 100 pounds or higher, and the charges \$15 per car or over. Certain commodities, including ice, were excepted from its application, and from February 25, 1911, to February 1, 1912, when the North Western established a tariff rule authorizing the absorption of switching charges on ice to the amount of \$3 per car, no authority existed for the absorption by the North Western of any switching charges on ice at Chicago. On February 2, 1914, the North Western removed the exception of ice from the reciprocal switching arrangement and has since absorbed all the delivery switching charges.

Shortly before the adoption of the Lowrey tariff the North Western, by tariffs filed with the Commission, proposed to increase the line-haul rate on ice from Wisconsin points to Chicago from 3 cents to $3\frac{1}{2}$ cents per 100 pounds. Upon protests by Chicago ice dealers the tariffs were suspended pending investigation. Meanwhile a formal complaint was filed by the ice dealers attacking the then existing rate of 3 cents per 100 pounds. An agreement was reached between the carrier and the protestants in the suspension case, who were also the complainants in the formal case, whereupon the carrier subsequently withdrew the suspended tariffs. The formal complaint was abandoned, and the North Western filed an application on our informal docket to refund to the proper parties \$3 per car on all ice moved to Chicago from Wisconsin points, including Salem and Twin Lakes, during the period from February 25, 1911, the effective date of the North Western's nonabsorption tariff, to February 1,

1912, the effective date of the tariff providing for the absorption of \$3 per car. We approved this arrangement but conditioned the issuance of our orders authorizing payment of the refunds upon the inclusion of all shipments of ice moved between the same points of origin and destination during the period named, in the reparation awarded, whether shipped by those who were parties to the proceedings or by others. Among those named in the North Western's application was the Hygienic Ice Company, to which it sought to pay \$2,436.50 on the identical shipments now before us. As to all other shippers we granted to the North Western the necessary authority to make the refunds asked. While the carrier's application was pending L. C. Tewes, intervener herein, served notice on the North Western that he also claimed reparation on the shipments enumerated in the claim of the Hygienic Ice Company. We withheld authority for refund relative to these shipments, and this complaint followed.

Complainant does not limit the amount now claimed to \$3 per car, but seeks reparation in the full amount of the charges imposed over and above the 3-cent flat rate to Chicago. The North Western contends that for the amounts claimed in excess of \$3 per car, the amount named in the application filed by the North Western on our informal docket July 5, 1912, the claim is barred by the statute of limitations. Complainant insists, however, that as the same shipments are involved the statute was tolled by the informal application and that the increase in the amount claimed does not establish a new or different cause of action.

The informal application involved was filed by the carrier, but may be assumed to have been in effect an application on behalf of the Hygienic Ice Company. It was not sufficiently specific and broad in its terms to put the carriers on notice to defend the retention of the charges in excess of \$3 per car. As was said in *United States Leather Co. v. S. Ry. Co.*, 21 I. C. C., 323:

While this Commission is extremely liberal in considering the pleadings before it, the statute requires that carriers shall be notified of the complaint which they are required to answer, and though no particular form is insisted upon, there must be a statement of the thing which is claimed to be wrong sufficiently plain to put the carrier upon its defense.

See also *Board of Trade of Chicago v. A., T. & S. F. Ry. Co.*, 29 I. C. C., 438. A somewhat analogous situation was presented in *Aero Cement Plaster Co. v. St. L. & S. F. R. R. Co.*, 18 I. C. C., 376, which involved a single shipment, moved on June 25, 1907, from Cement, Okla., to Leadwood, Mo., by way of St. Louis. On May 29, 1909, defendant asked permission on our informal docket to refund the switching charges of \$3 imposed at St. Louis. Before a decision had been reached a formal complaint was filed, December 9, 1909,

attacking the rate from Cement to St. Louis on account of a subsequently reduced minimum, and alleging also that a switching charge of \$3 at St. Louis was unreasonable. In our report upon the formal complaint we stated:

But at no time save by this formal complaint, has there been presented to the Commission a claim for reparation based upon a reduction of the minimum between Cement and St. Louis, and no relief in relation thereto has ever been requested. It is clear that a claim for the refund of a switching charge at St. Louis is not a claim for the refund of an excessive charge or minimum for the haul from Cement to St. Louis. The same measure of damages will not govern, nor will the same evidence support both. They are distinct and separate and, in fact, were charged by separate carriers in different tariffs, only one of which was a party to the informal proceedings. We therefore hold that the claim for reparation for an excessive minimum applicable to a haul between Cement and St. Louis was not saved from the running of the statute of limitations through the filing of an informal complaint claiming reparation based only upon a switching charge at St. Louis.

We hold that in so far as the present complaint seeks the recovery of amounts in excess of \$3 per car it broadens the scope of the informal case and creates a new and independent cause of action not presented to us within the statutory period, and that the claim for reparation in excess of \$3 per car is barred.

We are of opinion that the charges collected were unreasonable and unjustly discriminatory to the extent of the full amount of the switching charges imposed where such switching charges amounted to \$3 per car or less; and to the extent of \$3 per car on those shipments on which the switching charges exceeded that amount. The North Western admits that the charges were unreasonable to the extent specified, and that some one has been damaged by its failure to absorb this amount. It only remains to determine the party or parties entitled to the reparation. Intervener admits that he did not pay any of the freight charges on the cars shipped by him and did not reimburse any others who may have paid the charges. He contends, however, and the record supports the contention, that upon the representation of the South Side Ice Company, complainant's predecessor, that there was a probability of the Chicago carriers increasing their line-haul rates to 3½ cents per 100 pounds and discontinuing all absorptions of switching charges, he was induced to shrink his selling price for 1911, 10 cents per ton, in other words to sell to complainant at 80 cents per ton against the price of 90 cents per ton received in 1910. Whether or not this shrinkage in price actually was made to meet anticipated increased freight or switching charges is unimportant. There is testimony that complainant not only received the benefit of this reduction in price but further recouped itself by increasing its prices to certain retailers. Neither of these facts, however, can deprive complainant of the right of recovery if it be shown that it paid and finally bore the carrier's charges in controversy.

Shippers may not be heard to demand redress from the carriers for their commercial losses even though assumed by them for the purpose of equalizing transportation costs, and we are not concerned with the conditions of purchase and sale agreed upon between the parties before us except as they may have shifted from one to the other a part or all of the transportation charges. It is established of record that the transportation charges were not shifted in any manner. It is well settled that the one entitled to reparation found to be due is the party to the contract of carriage who has been damaged by paying and finally bearing the transportation charges. *Nicola Stone & Myers Co. v. L. & N. R. R. Co.*, 14 I. C. C., 199. *Kindelon v. S. P. Co.*, 17 I. C. C., 251. Any damages which intervener L. C. Tewes may have suffered were not attributable to acts of the carriers, and upon the principle stated he is not entitled to recover any part of the disputed charges. The shipments involved were consigned in many instances to customers of the Hygienic Ice Company. However, the transportation charges on all of the shipments were actually paid by the Hygienic Ice Company.

We find upon all of the facts of record that the shipments were made as stated herein; that complainant Hygienic Ice Company paid and bore the charges thereon; that on such of the shipments as were subject to switching charges at Chicago in the amount of \$3 per car or less it has been damaged in the full amount of the switching charges imposed; and that on those shipments on which the switching charges exceeded \$3 per car it has been damaged to the extent of \$3 per car. We further find that complainant is entitled to reparation from the North Western in the amount of said damages, with interest at the rate of 6 per cent per annum. In those instances where undercharges are outstanding against complainant authority hereby is given to waive such undercharges to the extent required for the satisfaction of the damages herein found. Complainant should prepare a statement showing as to each shipment on which reparation is claimed the date of movement, points of origin and ultimate delivery, weight, route, car number and initials, rate and switching charges applied, charges collected, outstanding undercharges, and the amount of reparation due under our findings herein, which statement should be submitted to the North Western for verification. Upon receipt of a statement so prepared by complainant and verified by the North Western we will consider further issuing an order awarding reparation.

No. 6808.

I. T. AXTON

v.

KANAWHA & MICHIGAN RAILWAY COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS No. 1952
OF THE LOUISVILLE & NASHVILLE RAILROAD COM-
PANY AND No. 4966 OF THE CHESAPEAKE & OHIO
RAILWAY COMPANY.

Submitted March 26, 1915. Decided December 20, 1915.

1. Rates charged by defendants for the transportation of glass bottles in carloads from Dunbar, W. Va., to Midway and Frankfort, Ky., found unreasonable and unjustly discriminatory, and rates to Mount Sterling and Lexington, Ky., found unjustly discriminatory, to the extent that they exceeded the rates contemporaneously charged on like traffic to Louisville, Ky.
2. Authority to charge rates on glass bottles in carloads from Dunbar, W. Va., to Mount Sterling, Lexington, Midway, and Frankfort, Ky., higher than those contemporaneously charged on similar traffic to Louisville, Ky., denied.

J. V. Norman and J. S. Kelley, jr., for complainant.

W. A. Northcutt and William Burger for Louisville & Nashville Railroad Company.

A. P. Gilbert for Chesapeake & Ohio Railway Company.

W. N. King for Kanawha & Michigan Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a jobber of bottles and bottling supplies, with his principal place of business at Louisville, Ky. By complaint, filed April 10, 1914, he alleges that defendants' rates for the transportation of glass bottles in carloads from Dunbar, W. Va., to Midway, Frankfort, Lexington, and Mount Sterling, Ky., are unreasonable and unjustly discriminatory. Those portions of Louisville & Nashville Railroad Fourth Section Application No. 1952 and Chesapeake & Ohio Railway Fourth Section Application No. 4966 which ask authority to continue rates on glass bottles from Dunbar to Louisville, Ky., which are lower than the rates concurrently applicable

on like traffic to Mount Sterling, Lexington, Midway, Frankfort, and other intermediate points, were set for hearing with the complaint.

Dunbar is on the Kanawha & Michigan Railway, about 7 miles from Charleston, W. Va. Frankfort and Midway are on the Louisville & Nashville, 65 miles and 80 miles, respectively, east of Louisville, Ky. Lexington is the junction point of the Chesapeake & Ohio and the Louisville & Nashville, and is also served by the Southern Railway and the Cincinnati, New Orleans & Texas Pacific Railway. It is 94 miles east of Louisville. Mount Sterling is on the Chesapeake & Ohio, 34 miles east of Lexington. From Lexington to Louisville the Chesapeake & Ohio operates over the tracks of the Louisville & Nashville under a trackage agreement by which it is prohibited from transporting freight from or to points between Lexington and Louisville. Shipments from Dunbar move via the Kanawha & Michigan to Charleston, where they are delivered to the Chesapeake & Ohio. For this movement the Kanawha & Michigan imposes a switching charge of \$4 per car, which is absorbed by the Chesapeake & Ohio on shipments to noncompetitive points. We shall therefore confine our discussion to the rates from Charleston.

When the complaint was filed the Chesapeake & Ohio's rates from Charleston to Mount Sterling, Lexington, and Louisville were 17 cents, 18 cents, and 15 cents per 100 pounds, respectively, for distances of 156 miles, 190 miles, and 274 miles. The present rates are 17.9 cents, 18.9 cents, and 15.8 cents, the increases having been authorized in *The Five Per Cent Case*, 32 I. C. C., 325. To Midway and Frankfort the rates are 28.9 cents and 27.8 cents, respectively. The rate to Midway is composed of the Chesapeake & Ohio's 18.9-cent rate to Lexington and the Louisville & Nashville's 10-cent local beyond. The rate to Frankfort is composed of the Chesapeake & Ohio's 15.8-cent rate to Louisville and the Louisville & Nashville's 12-cent local back.

On the question of reasonableness complainant's testimony was confined to the rates to Midway and Frankfort. Complainant argues that the local rate of 10 cents from Lexington to Midway, 14 miles, and the local rate of 12 cents from Louisville to Frankfort, 65 miles, do not bear a "reasonable relation to the total distance involved," and that therefore it is unreasonable to construct through rates by adding these local rates to the rates for the longer hauls up to Lexington and Louisville. *Brewer & Hanleiter v. L. & N. R. R. Co.*, 7 I. C. C., 224, and *Board of Trade of Carrollton, Ga., v. C. of G. Ry. Co.*, 28 I. C. C., 154, are cited as condemning the southern basing point system of rate making, especially where it involves the addition of full locals or higher differentials to the rates to the basing points.

Complainant also compares the rates attacked with the rates to Louisville and points between Frankfort and Louisville. These rates are made by combination on Louisville and decrease as the distance from Charleston increases, for the reason that the local rates back from Louisville increase with distance in the opposite direction. The corresponding rates from Huntington, W. Va., 51 miles nearer than Charleston, are shown to be 13.7 cents per 100 pounds to Mount Sterling, Lexington, and Louisville, and 23.7 cents to Midway.

Defendants state that the construction of rates to Midway and Frankfort by the addition of the locals from Louisville or Lexington accords with the practically uniform custom in the south and south-east where rates to local points are made on the basis of the lowest combination. The 18.9-cent rate to Lexington is the Chesapeake & Ohio's mileage scale rate, which scale is said to be the lowest scale of any line operating in Kentucky. The 15.8-cent rate to Louisville is less than the Chesapeake & Ohio's scale for the distance involved, and is said to have been compelled by water competition. It is shown to compare favorably with numerous rates for hauls of substantially the same distance in central freight association territory. The 10-cent local from Lexington to Midway is the Louisville & Nashville mileage scale rate, and is compared by defendants with numerous rates of southern roads for approximately the same distance. The 12-cent local from Louisville to Frankfort is less than the Louisville & Nashville's scale because of potential water competition on the Kentucky and Ohio rivers. This rate is compared with rates in southern territory for approximately the same distance that range from 20 cents to 35 cents per 100 pounds. The through rates from Dunbar, or Charleston, to Midway and Frankfort are compared with rates for equal or less distances from manufacturing points north of the Ohio River to points in the south, and between points south of the Ohio River, which rates are somewhat higher, distances considered, than the rates assailed.

Complainant's testimony on the question of discrimination is meager, and is designed almost exclusively to show that bottles shipped to Louisville take lower rates than bottles shipped to Midway and Frankfort. Complainant relies principally on *Greenbaum Co. v. L. & N. R. R. Co.*, 31 I. C. C., 699. We shall consider this issue in connection with the fourth section applications involved, which present practically the same issue.

Defendant Chesapeake & Ohio only attempted to justify the charging of higher rates to Lexington and points east thereof than to Louisville. The rates to Midway and Frankfort were omitted because the Chesapeake & Ohio only had trackage rights from Lexington to Louisville. The Great Kanawha River, on which Charleston

and Dunbar are located, and the Ohio River are said to afford a continuous water route from Charleston to Louisville and boat lines operating from Charleston to Cincinnati and from Cincinnati to Louisville make this route available during practically all seasons of the year. The Chesapeake & Ohio extends west from Charleston to Ashland, Ky., where it branches. One branch parallels the Ohio River to Cincinnati while the other extends through Lexington to Louisville. It is stated that ordinarily all points on the Chesapeake & Ohio would take rates based on mileage the same as Lexington and Mount Sterling, but that the water competition described forces lower rates to Louisville and Cincinnati.

The Louisville & Nashville states that water competition also justifies lower rates to Louisville than to Midway and Frankfort, and argues that rates to Midway and Frankfort the same as the rates to Louisville would unduly prefer Midway and Frankfort to the prejudice of consuming points in Kentucky that are not intermediate to Louisville from producing points. Violation of the fourth section is denied because the Louisville & Nashville participates in the rate of 15.8 cents from Charleston and Dunbar only by way of Cincinnati and does not transport shipments to Louisville through Midway and Frankfort.

We said in *Greenbaum Co. v. C. & O. Ry. Co.*, 25 I. C. C., 352, and also in *Greenbaum Co. v. L. & N. R. R. Co.*, *supra*, relative to the trackage agreement here involved that—

We do not think it within our province to determine the validity or legality of this contract. Neither carrier can use it as a shield against the obligations laid upon it by the statute. The Louisville & Nashville owns this track either by itself or in conjunction with the Chesapeake & Ohio. It has and uses a direct connection with the Chesapeake & Ohio at Lexington. It joins in joint through rates over this track from Louisville through Midway, and also from Midway to Norfolk and Newport News for export. Presumably it makes no difference to complainant whether his shipments are moved by a Louisville & Nashville train or by a Chesapeake & Ohio train. We think that the question here presented may be treated the same as if no contract existed between the Louisville & Nashville and the Chesapeake & Ohio. The contract has had no effect upon the rates from either Louisville or Midway.

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A carrier is responsible for unjust discrimination in rate adjustment as between two places if it serves both places or participates in their carrying trade.

Carload shipments of bottles are being transported from Dunbar to Louisville through Midway and Frankfort at a rate of 15.8 cents, which would take a rate of 28.9 cents if consigned to Midway and a rate of 27.8 cents if consigned to Frankfort. There is therefore a clear departure from the long-and-short-haul rule, which can not be

justified by the Chesapeake & Ohio's relinquishment of traffic to Midway and Frankfort. The carriers responsible are before us in this proceeding. In *Greenbaum v. L. & N. R. R. Co.*, *supra*, we held that higher rates on bottles from points in central freight association territory and Pittsburgh, Pa., and Wheeling, W. Va., to Midway by way of Lexington than to Louisville by way of Lexington were unjustly discriminatory, and we denied fourth section relief. Water competition to Louisville was not mentioned by the defendants in that case, although Pittsburgh and Wheeling both are located on the Ohio River, which admittedly is navigable from those points to Louisville. No attempt is made by defendants herein to distinguish the *Greenbaum case*, nor is it shown that the conclusions therein reached should not apply to like traffic from Charleston and Dunbar. As a result of the *Greenbaum case*, the Louisville & Nashville merely canceled the application of the 15.8-cent rate to Louisville by its route through Midway, confining its application to the longer route through Cincinnati.

We find that the rates assailed, except the rates to Midway and Frankfort, are not shown to be unreasonable, but that the rates to Midway and Frankfort, made in combination on Louisville and Lexington, are unreasonable, because the rates to those points do not bear a reasonable relation to the rates for the long hauls to the basing points. We shall not undertake to say what rates would be reasonable, because we further find that it is, and for the future will be, unjustly discriminatory for defendants or any of them to charge higher rates for the transportation of glass bottles in carloads from Dunbar to Mount Sterling, Lexington, Midway, and Frankfort than they contemporaneously maintain on the same commodity from Dunbar to Louisville. We also find that defendants have not justified the maintenance of lower rates on bottles in carloads from Dunbar to Louisville than are concurrently maintained by them or any of them on like traffic from the same point of origin to Mount Sterling, Lexington, Midway, Frankfort, and other intermediate points, and fourth section relief will be denied.

Appropriate orders will be entered.

37 I. C. C.

No. 7222.
EMPIRE COTTON OIL COMPANY
v.
**ATLANTA, BIRMINGHAM & ATLANTIC RAILROAD
COMPANY ET AL.**

Submitted September 16, 1915. Decided December 21, 1915.

Rate of \$3.40 per net ton charged on five carload shipments of slag from Bessemer, Ala., to McRae, Ga., found to have been unreasonable to the extent that it exceeded \$1.54 per net ton. Reparation awarded.

S. Linthicum for complainant.
No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the oil mill business at Atlanta, Ga., with a mill at McRae, Ga. By complaint, filed August 31, 1914, it alleges that the charges collected by defendants for the transportation of five carloads of slag from Bessemer, Ala., to McRae in October, 1912, were unreasonable and unjustly discriminatory. Reparation is asked.

The shipments were moved by the Atlanta, Birmingham & Atlantic Railroad from Bessemer to Cordele, Ga., and by the Seaboard Air Line Railway thence to McRae, a total distance of about 336 miles. No joint rate was applicable specifically on slag from and to the points here involved. Southern classification in effect at the time provided that in the absence of a specific classification or commodity rate on slag the rate on cement would apply. The rate on cement in carloads was \$3.40 per ton. Charges were collected in the sum of \$665.38 on 391,400 pounds of slag at this rate. Cement was worth at the time about \$10.05 per ton; slag about 40 cents per ton. Rates on slag applicable to and from Cordele were: \$1.15 per ton from Bessemer to Cordele, and 53½ cents beyond from Cordele to McRae, a total of \$1.68½ per ton. Rates to and from Macon, Ga., via the Southern Railway were 90 cents per ton from Bessemer to Macon and 64 cents from Macon to McRae, a total of \$1.54 for 353 miles. The discrepancy between the rate charged and the aggregate of the intermediate rates was protected by a fourth section application that has not yet been heard. Comparisons are made with the following rates concurrently in effect from Bessemer: \$1.70½ to Ocilla, Ga., 325 miles; \$1.45 to Fitzgerald, Ga., 316 miles; \$1.40 to

Augusta, Ga., 359 miles; \$1.43½ to Dublin, Ga., 314 miles; \$1.60 to Jacksonville, Fla., 462 miles. Effective March 10, 1913, a joint rate of \$1.54 was published to apply over the route of movement, thereby removing the departure described from the aggregate of intermediate rates provision of the fourth section. Defendants expressed a willingness on our informal docket to make reparation, admitting that the rate charged was unreasonable to the extent that it exceeded \$1.54, which rate is satisfactory to complainant.

We find that the \$3.40 rate charged was unreasonable to the extent that it exceeded \$1.54; that complainant made the shipments involved as described and paid and bore charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges collected and the charges that would have accrued at a rate of \$1.54 per net ton, and that it is entitled to reparation with interest. The exact amount of reparation due can not be determined on the present record. Complainant accordingly should prepare a statement showing as to each shipment on which reparation is claimed the date of movement, point of origin, point of destination, route, car number and initials, weight, rate applied, charges collected, date of payment of charges, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainant and verified by defendants, we will consider further issuing an order awarding reparation. As the rate herein found reasonable has been in force for more than two years, no order for the future is necessary.

87 I. C. C.

No. 7590.
H. KEMPNER
v.
MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF
TEXAS.

Submitted July 15, 1915. Decided December 21, 1915.

Charges collected on five carloads of damaged cotton shipped in sacks from Greenville, Tex., to Galveston, Tex., held not within the jurisdiction of the Commission.

John Neethe for complainant.

J. F. Garvin, J. S. Hershey, and F. R. Dalzell for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is Eliza Kempner, a cotton factor at Galveston, Tex., under the name of H. Kempner. By complaint, filed December 15, 1914, she alleged that defendant's rate of 51 cents per 100 pounds for the transportation of five carloads of cotton junk, in sacks, from Greenville, Tex., to Galveston, for export, was unreasonable and unjustly discriminatory. Reparation is asked.

The shipments consisted of damaged cotton in sacks aggregating 108,664 pounds, and were made March 5, 1914. Charges were collected in the sum of \$554.18 at a rate of 51 cents per 100 pounds, applicable to staple cotton. Complainant contends that her shipments should have had a lower rate because they were worth only about one-fourth or one-fifth of the value of staple cotton. When baled cotton has been placed on wet ground for a long time the under part becomes discolored and damaged, and its tensile strength is considerably reduced. The damaged part is removed, usually, at a compress, and is collected in sacks and sold to dealers. Complainant's shipments consisted of this kind of low-grade damaged cotton. The record does not show definitely that the term "cotton junk" is in regular use as a trade name.

It is stated that before the shipments were made complainant's representative inquired of defendant's agent at Greenville relative to shipping this grade of cotton and was informed that a rate of 12 cents per 100 pounds would apply to Houston on "cotton junk," but that the rate on cotton junk would not apply to Gal-

veston. The shipments accordingly were billed to Houston, order notify, on local bills of lading, and advance charges were paid at a rate of 12 cents. Later they were reconsigned to Galveston. Additional charges were collected at destination, based on the through rate of 51 cents per 100 pounds. The charges were paid under protest, whereupon complainant took possession of the shipments, transported them to her warehouse, paid the drayage charges therefor, opened the sacks, separated the worthless cotton and foreign matter from the marketable cotton, dried the remaining part and had it reginned and baled at a near-by gin. The rebaled cotton remained in complainant's possession for about four or five months before it was drayed, at complainant's expense, to ship side and transported to foreign destinations. The bills of lading issued at Greenville did not show any destination beyond Houston, and when the shipments were reconsigned to Galveston the carrier was not informed that the shipments were intended for export. The 51-cent state rate was applied.

Defendant contends that the intrastate rate was applicable, but complainant argues that the movement was interstate commerce, because there was no market at Galveston for cotton of the grade involved and because the shipments subsequently were reshipped to a foreign market.

The manner in which these shipments were handled rendered them intrastate to Galveston. *G., C. & S. F. Ry. Co. v. Texas*, 204 U. S., 403; *Big Canon Ranch Co. v. G., H. & S. A. Ry. Co.*, 20 I. C. C., 523; and *Johnson v. M., St. P. & S. Ste. M. Ry. Co.*, 22 I. C. C., 255. The complaint accordingly will be dismissed for want of jurisdiction.

37 I. C. C.

No. 7900.
WATROUS-ACME MANUFACTURING COMPANY
v.
PERE MARQUETTE RAILROAD COMPANY ET AL

Submitted July 6, 1915. Decided December 21, 1915.

Charges collected for the transportation of pieces of steel left after automobile bodies had been cut from the original steel sheets not shown to have been unreasonable. Complaint dismissed.

F. W. Knoche for complainant.

A. L. Viles for Pere Marquette Railroad Company and its receivers.

R. G. Brown for Chicago, Rock Island & Pacific Railway Company and Chicago, Burlington & Quincy Railroad Company.

R. H. Widdicombe for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of light hardware at Des Moines, Iowa. By complaint, filed April 10, 1915, it alleges that the rate of 29 cents per 100 pounds charged by defendants for the transportation of three carloads of "scrap iron" from Flint, Mich., to Des Moines, between March 31, 1914, and April 11, 1914, was unreasonable to the extent that it exceeded the rate of 22 cents per 100 pounds applicable on scrap iron. Reparation is asked.

The shipments consisted of pieces of steel left after automobile bodies had been cut from the original steel sheets. The pieces were irregular in size and shape. Some were approximately triangular, measuring from 3 to 4 feet along the base. They cost complainant \$11.75 per ton. The original sheets were worth \$60 per ton. About two-thirds of the material shipped was available for use and was used by complainant in the manufacture of metal centers for oil mops and also apparently for other articles. The remainder complainant sold for remelting, at prices ranging from \$4 to \$7 per ton. Complainant testified that it bought the material as scrap and considered it junk. It was invoiced to complainant as sheet steel cuttings and was de-

scribed in the bills of lading as "sheet steel cuttings, scrap." However, the material was segregated from the ordinary scrap piles at the consignor's plant and was sheltered from the weather to protect it for further manufacture.

No specific rates were provided for sheet steel cuttings, and charges were collected from complainant at a rate of 29 cents per 100 pounds, composed of the fifth-class rate of 18 cents to the Mississippi River and a commodity rate of 11 cents, applicable to sheet steel, beyond. Complainant contends that a combination rate of 22 cents should have been applied, composed of the sixth-class rate of 10 cents, governed by the official classification to Chicago, and a commodity rate of 12 cents, applicable on scrap iron, beyond. Rates on scrap iron generally are understood to apply on scraps or pieces of steel or iron useful only for remelting.

We find that the shipments were not composed of scrap iron, and that the charges assessed are not shown to have been unreasonable.

The complaint will be dismissed.

37 I. C. C.

No. 7989.

BEEKMAN LUMBER COMPANY
v.
MISSOURI PACIFIC RAILWAY COMPANY ET AL

Submitted August 7, 1915. Decided December 21, 1915.

Demurrage charges accruing at point of origin as a result of refusal of defendants' agent to forward a shipment as tendered by complainant found to have been collected unlawfully. Reparation awarded.

G. H. Lowry for complainant.

H. G. Herbel and *F. G. Wright* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business, with its principal office at Kansas City, Mo. By complaint, filed May 8, 1915, it alleges that the demurrage charges collected by defendants on a carload of lumber shipped from Pawnee, La., to Kansas City, in March, 1914, were unreasonable. Reparation is asked.

The shipment consisted of one carload of yellow-pine lumber and originated at Pawnee on the line of defendant, St. Louis, Iron Mountain & Southern Railway Company, hereinafter called the Iron Mountain. The car was billed by the shipper at Pawnee on complainant's account to Cypress, Ill., for the purpose of reconsigning it to Hillsdale. The Iron Mountain's agent at Pawnee refused to forward the car by way of Thebes, Ill., as directed by the shipper, and insisted that it be sent by way of East St. Louis, Ill. While complainant was endeavoring to have the car sent forward, \$18 demurrage accrued. The car finally was shipped to Kansas City. Complainant paid the demurrage and brings this action to recover it.

Through rates from Pawnee to Cypress and Hillsdale are made by combination on Thebes. Routing by way of East St. Louis would have given the Iron Mountain a longer haul and would not have increased the rate, but the tariff naming the rate did not restrict its application. The shipper, therefore, was in no way responsible for the delay.

We find that the demurrage charges collected were unlawful; that the shipment was tendered by complainant and held by the Iron Mountain, as described; that complainant paid and bore the unlawful demurrage charges thereon and has been damaged in the amount of the charges so paid, and that it is entitled to reparation from the Iron Mountain in the sum of \$18, with interest from March 30, 1914.

An order will be entered accordingly.

No. 7923.
DARLING & COMPANY
v.
PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAIL-
WAY COMPANY.

Submitted July 8, 1915. Decided December 21, 1915.

Demurrage was assessed by defendant on a carload of fertilizer held at destination pending the arrival of a second car, both cars having been covered by a single bill of lading; *Held*, That demurrage charges are prescribed as a penalty per car with the object of conserving equipment. The charges collected are not shown to have been unlawful or unreasonable. Complaint dismissed.

L. M. Walter for complainant.

Theodore Schmidt for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in the manufacture and sale of commercial fertilizer at Chicago, Ill. The complaint, filed April 16, 1915, alleges that on September 16, 1914, complainant shipped 56,490 pounds of fertilizer from Chicago to Madison, Ind.; that the shipment moved as an integral shipment in two cars under a single bill of lading; that one car arrived at destination September 19, 1914, the other September 24, 1914; that demurrage in the sum of \$4 was assessed on the first car pending the arrival of the second; and that the assessment of demurrage was unlawful and unreasonable. Reparation is asked. No complaint is made of the rate charged.

It appears that the two cars contained various brands of fertilizer; that all of the brands were required to complete individual mixtures which had been sold to various farmers; and that the consignee, in order to complete the delivery of mixed lots to different customers, deferred unloading the first car until the second car arrived.

Complainant maintains that the two cars constituted a single shipment throughout the journey and that demurrage could not have begun to accrue until the entire shipment covered by the bill of lading was tendered for delivery. Defendant's rules provide for the assessment of demurrage on all cars held for or by consignors or consignees for loading, unloading, or any other purpose, and make no exception

of cars covered by one bill of lading and arriving at destination on different dates.

Under the tariff here applicable it is the duty of the consignee, and not of the carrier, to unload the freight within a reasonable time after its arrival at destination, and when this is not done and detention of equipment results, a reasonable additional charge may lawfully be imposed. The charge is imposed as a penalty per car for the purpose of conserving equipment.

Separation of cars in transit is a common incident of transportation, involving no presumption of negligence on the part of the carrier, and no negligence is here charged or shown. In cases where delivery of less than an entire shipment is tendered, the consignee has the alternative of either releasing the equipment by unloading the portion offered for delivery or of paying charges prescribed for its detention. If it elects to defer unloading until the arrival of the entire consignment, it can not be heard to complain of the resulting additional cost. A rule beneficial in its general application may work occasional hardship but is not merely on that account to be condemned.

Upon all the facts disclosed we find that the charge assailed is not shown to have been unlawful or unreasonable, and an order will be entered dismissing the complaint.

87 I. C. C.

No. 7633.
NATIONAL PICKLE & CANNING COMPANY
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY.

Submitted April 21, 1915. Decided December 21, 1915.

Rates charged for the transportation of pickles in carloads, in cases, casks, or barrels, from New Lisbon, Wis., to Chicago, Ill., found to have been unjustly discriminatory. Reparation denied.

O. M. Rogers for complainant.

C. A. Lahey for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of food products at St Louis, Mo. By complaint, filed December 28, 1914, it alleges that defendant's rate of 15 cents per 100 pounds, in effect prior to August 6, 1913, and the present rate of 14 cents per 100 pounds, which has been in effect since that date, charged for the transportation of carload shipments of pickles, in cases, casks, and barrels, on various dates between August, 1912, and December 28, 1914, from New Lisbon, Wis., to Chicago and Blue Island, Ill., were unreasonable and unjustly discriminatory. Reparation is asked. The claim was presented to the Commission informally August 13, 1914.

New Lisbon is situated on defendant's line 219 miles northwest of Chicago. Traffic from New Lisbon to Chicago generally moved on the Wausau, Wis., group basis. The rate on pickles from Wausau to Chicago was and is 15 cents. The rates assailed are compared with rates of 12½ cents per 100 pounds on pickles from Necedah, Wis., to Aurora, Ill., 12½ cents from Mauston, Wis., to Chicago, 13 cents from Tomah, Wis., to Chicago, and 14 cents from Sparta, Wis., to Chicago. Necedah is 268 miles from Aurora via defendant's line to Chicago, thence Chicago, Burlington & Quincy Railroad. Mauston is 212 miles from Chicago; Tomah, 238 miles; and Sparta, 254 miles. These points are all in the general vicinity of New Lisbon and are served by defendant's line. Pickle or salting plants are located at each point. Effective June 21, 1915, the rates from Mauston and Tomah were increased to 14 cents per 100 pounds, equal to the rate from

New Lisbon. The 12½-cent rate from Necedah through Chicago to Aurora, Chicago, Burlington & Quincy beyond Chicago, has been increased to 15 cents per 100 pounds, and defendant has filed a tariff seeking to increase the 12½-cent rate to 13½ cents via other connections. The rate proposed is under suspension. The rates from Sparta and Tomah to Chicago, and from Necedah through Chicago to Aurora, departed from the long-and-short-haul rule of section 4 while the 15-cent rate was in effect from New Lisbon to Chicago. After the rate from New Lisbon was reduced to 14 cents the rate from Tomah to Chicago departed from the long-and-short-haul rule until June 21, 1915. The complaint does not allege a violation of the fourth section, and defendant's fourth section application covering the situation has not been heard. But a representative of defendant stated at the hearing that in his opinion the departure from the long-and-short-haul rule on traffic from Sparta and Tomah was indefensible, and all of the fourth section departures described have been rectified.

Complainant contends and defendant admits that the rate from New Lisbon should not be higher than the rate from Mauston, which is only 7 miles east of New Lisbon. The rate on pickles from both points to Milwaukee, Wis., was 11 cents per 100 pounds. New Lisbon is now on the same basis as other near-by points on traffic destined to Chicago. The record does not show the conditions surrounding the traffic involved and does not establish the measure of any of the rates in question.

We find that the rates complained of were unjustly discriminatory to the extent that they exceeded the rate contemporaneously in effect from Mauston and that for the future the rate on pickles in carloads, in cases, casks, or barrels, from New Lisbon to Chicago should not exceed the rate concurrently applicable from Mauston to Chicago. The record does not establish damage to complainant as a result of the discrimination found and no reparation will be awarded.

Our findings do not mention the rates to Blue Island. The carriers performing the service from Chicago to Blue Island are not made defendants. But Blue Island takes Chicago rates, and we assume that the rate herein prescribed to Chicago will also be established to Blue Island.

An appropriate order will be entered.

No. 7808.
STANDARD PAINT COMPANY
v.
SOUTHERN PACIFIC COMPANY ET AL.

Submitted July 19, 1915. Decided December 21, 1915.

Charges collected for the transportation of 34 carloads of liquid asphaltum in tank cars from Paraffin, Cal., to Chicago Heights, Ill., at the lawful rate and estimated weight of 8.6 pounds per gallon, based on the marked gallon capacity of cars, found unreasonable to the extent that they exceeded charges that would have accrued at the lawful rate, based upon an estimated weight of 7.9 pounds per gallon and the marked gallon capacity of the cars used. Reparation awarded.

E. R. Johnston for complainant.

W. G. Neimyer for Southern Pacific Company.

T. E. Bond for Elgin, Joliet & Eastern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of prepared roofing paper and allied products at Chicago Heights, Ill., as the successor in interest to the Paraffine Paint Company, by which name it was formerly known. By complaint filed March 4, 1915, it alleges that the charges collected by defendants for the transportation of 36 carloads of liquid asphaltum in tank cars, shipped from Paraffin, Cal., to Chicago Heights, between March 25, 1912, and August 25, 1912, at the lawful rate and estimated weight of 8.6 pounds per gallon applied to the marked gallon capacity of the cars, were unjust and unreasonable to the extent that they exceeded the charges that would have accrued at the lawful rate applied on the basis of the actual weight of the shipments. Reparation is asked. The rate charged is not assailed. An informal complaint involving 34 carload shipments was filed March 7, 1914, but the claims based on two shipments made August 20, 1912, and August 25, 1912, respectively, were not presented until more than two years after they accrued and are barred by the statute of limitations.

The shipments moved: Southern Pacific Company to Ogden, Utah; Union Pacific Railroad to Council Bluffs, Iowa; Chicago, Milwaukee & St. Paul Railway to Spaulding, Ill.; Elgin, Joliet & Eastern Railway to destination. Charges were collected at the lawful rate

of 55 cents per 100 pounds, applied on the basis of 8.6 pounds per gallon and the marked gallon capacity of the cars.

Prior to March 23, 1912, defendants' tariffs governing the movement of this traffic from Paraffin to Chicago Heights prescribed a rate applicable to tank cars loaded to capacity, expressed in cents per 100 pounds, the car capacity in gallons. No method of determining the weight per gallon was prescribed. Effective March 23, 1912, defendants established a weight of 8.6 pounds per gallon to be multiplied by the loading capacity of the cars in gallons. This weight was established after tests with cold asphaltum and was in effect during the period of movement in issue. It appears, however, that asphaltum must be heated to a temperature of 200 degrees Fahrenheit in order to load it into tank cars, and that subsequent tests at Paraffin and other points gave an estimated weight of 7.9 pounds per gallon of hot asphaltum. Asphaltum shrinks in quantity in cooling and complainants, therefore, protested against the application of the weight per gallon of cold asphaltum to the gallonage capacity of the cars on the ground that it resulted in the collection of charges on a quantity in excess of the quantity actually transported. Supplement No. 7 to transcontinental freight bureau tariff 3-J, I. C. C. No. 954, item No. 120-C, effective October 21, 1912, canceled the item prescribing the estimated weight of 8.6 pounds, and provided that weights and charges would be based on the gallon capacity of cars. This tariff also expresses the rates in cents per 100 pounds, but provides no means for reducing gallons to pounds. In computing charges under the provisions of this tariff defendants uniformly have allowed 7.9 pounds per gallon, and urge that this is the only feasible basis for estimating charges. This may be true, but the law does not contemplate that the terms of a tariff should be supplemented by the arbitrary practice of carriers. *Newton Gum Co. v. C., B. & Q. R. R. Co.*, 16 I. C. C., 341. The tariffs should be complete.

Sediment and foreign substances adhere to tank linings, and defendants maintain that the difference between the gross weight of the cars and the tare weight does not approximate the actual weight of the shipment as closely as the estimated weight computed on the basis of 7.9 pounds per gallon. Twenty-nine of the shipments in issue were weighed by the Trans-Continental Weighing & Inspection Bureau or by the Western Railway Weighing & Inspection Bureau. The scale weights of 26 of these shipments were from 450 pounds to 4,380 pounds per car less than the weights computed on the basis of 7.9 pounds per gallon, but it is not established that the cars in these instances contained full capacity loads of asphaltum. Each of the cars involved was of 6,500 gallons capacity, and the capacity weight at 7.9 pounds per gallon would be 51,350 pounds. The five shipments

not weighed were invoiced at 51,000 pounds each, indicating the application of a commercial estimate of approximately 7.9 pounds.

We find upon all of the facts of record that the charges assailed were unreasonable to the extent that they exceeded the charges that would have accrued at the lawfully published rate based upon an estimated weight of 7.9 pounds per gallon and the marked gallon capacity of the cars used, and that for the future this basis of estimated weights will be reasonable; that the 34 shipments involved were made as described; that complainant paid and bore charges thereon at the lawful rate applied to the estimated weights herein found unreasonable; that complainant was damaged to the extent that the charges paid exceeded the charges that would have accrued at the lawful rate and estimated weight of 7.9 pounds per gallon herein found reasonable; and that it is entitled to reparation with interest.

The exact amount of reparation due can not be determined on the present record. Complainant accordingly should prepare a statement showing as to each shipment on which reparation is claimed the date of movement, point of origin, point of destination, route, car number and initials, weight, rate applied, amount of charges paid, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainant and verified by defendants, we will consider further issuing an order awarding reparation.

An order will be entered accordingly.

37 I. C. C.

**CHICAGO, WEST PULLMAN & SOUTHERN RAILROAD
COMPANY.**

SECOND INDUSTRIAL RAILWAYS CASE.

No. 4181.

**IN THE MATTER OF ALLOWANCES TO SHORT LINES OF
RAILROAD SERVING INDUSTRIES.**

INVESTIGATION AND SUSPENSION DOCKET No. 414.

**CANCELLATION OF RATES IN CONNECTION WITH
SMALL LINES BY CARRIERS IN OFFICIAL CLASSIFI-
CATION TERRITORY.**

Decided December 23, 1915.

1. Connecting carriers directed to revise their joint rate or switching arrangements with the Chicago, West Pullman & Southern Railroad Company so as to conform with the principles herein announced.
2. Where a trunk line permits an industrial line to operate over trunk line tracks, the arrangement may be just and proper so long as it is for their mutual benefit and does not prevent the trunk line from performing its public duties.
3. In so far as the division or allowance accorded the industrial line covers the operation over the tracks of the trunk line, the division or allowance may not exceed the operating and investment cost to the trunk line had the trunk line performed the same service by more than the proportionate share which that particular traffic should bear of the compensation paid by the industrial line for the use of the tracks; nor may the division or allowance exceed what would be just and proper under the principles applicable where the operation is over the tracks of the industrial line.

Same appearances as in the original report.

SUPPLEMENTAL REPORT OF THE COMMISSION.

MEYER, Commissioner:

In the original report in this proceeding, 34 I. C. C., 596, certain considerations were indicated which should govern the making of joint rate arrangements with industrial roads, and the trunk lines were expected to reform their tariffs and revise their divisions or switching allowances accordingly. Each line, upon becoming a partner to such an arrangement, was required "to file with us immediately upon consummation thereof a full statement of the arrange-

ments entered into, showing specifically the basis of rates applied from points on the industrial lines and the basis of the allowance or division thereof granted under the agreement." Under this requirement of the Commission the Illinois Central Railroad Company has submitted for approval the arrangement it proposes to make with the Chicago, West Pullman & Southern Railroad, one of the industrial lines party to this proceeding, hereinafter called the West Pullman.

In connection with the allowances proposed by the Illinois Central we shall examine the propriety of those accorded the West Pullman by its other trunk line connections, which were permitted to remain in effect pending an agreement as to the allowances to be made under the principles laid down in the original report. These allowances are the same as were accorded prior to the institution of this proceeding or of the first *Industrial Railways Case*, 29 I. C. C., 212; 32 I. C. C., 129.

The line of the West Pullman connects the Plano Works at West Pullman with the plant of the Wisconsin Steel Company at Irondale, both of which points are within the city limits of Chicago, Ill. It is owned by individual stockholders in the interest of the International Harvester Corporation, which also owns the Plano Works. The Wisconsin Steel Company is owned by the International Harvester Company of New Jersey. Prior to 1913 the West Pullman and both industries were owned by the old International Harvester Company, which was in that year dissolved, all of its property being taken over by the International Harvester Company of New Jersey and the International Harvester Corporation. Although these two concerns are separate and distinct corporations, the majority of the stock of each is held by the same stockholders. We have, therefore, a situation where at least one, if not two, of the industries served by this carrier are in the position of proprietary industries. The amount of switching allowances accorded the West Pullman must therefore be determined not only from the standpoint of what is fair among common carriers, but also from the standpoint of equality and justice among shippers. Before considering what allowances are just and proper a short résumé of the history of the West Pullman and a description of the line as at present operated and of the character of its traffic will be given.

The Plano Works was originally independent of the International Harvester interests and, together with other industries, was served by the West Pullman, which owned the tracks at West Pullman which were later acquired by the West Pullman, with which we are at present concerned. The West Pullman was originally owned by the Plano Works, the Whitman & Barnes Manufacturing Company, and the Chicago Malleable Castings Company, but later the Inter-

national Harvester interests secured control. The plant of the Wisconsin Steel Company at Irondale was originally served by the Calumet & Southeastern Railroad, which it owned and which operated over its plant tracks. The only physical property owned by the Calumet & Southeastern Railroad consisted of 7 locomotives and 31 freight cars. When the International Harvester interests purchased the Plano Works and the Wisconsin Steel Company they also secured the ownership of the two carriers above referred to. In 1909 the West Pullman was organized and incorporated under the general railroad laws of Illinois. Under this company the separate roads were merged and connected by means of trackage rights over the Illinois Central Railroad and the Chicago, Rock Island & Pacific Railway. The newly incorporated line continued to operate over the plant tracks of the Wisconsin Steel Company under substantially the same conditions as formerly existed with the Calumet & Southeastern, but was enabled to extend its operations beyond the plant property by means of the trackage rights secured from the Chicago, Rock Island & Pacific and Illinois Central.

The West Pullman is capitalized at \$400,000, all of which has been paid in. Of this amount \$155,000 was paid for the property, \$125,000 was loaned by the West Pullman to the Illinois Northern Railroad, \$85,000 to the International Harvester Company, \$15,000 to the Deering Southwestern Railway, and the balance was expended in construction and improvement of the line. On June 30, 1914, the reported investment value of its property less reserve for accrued depreciation amounted to \$259,406.44. The total net income for the first four and one-half years of operation, from January 1, 1910, to June 30, 1914, was \$264,584.16, of which \$120,000 was paid in dividends, none being paid in 1910 or 1911. The total net income for the four and one-half years as given above amounted to over 107 per cent of the average annual investment value, including material and supplies, during this period of \$246,338.41. The average annual net income was \$58,774.49, or 23.9 per cent of the average annual investment value.

The total length of track operated is 31.06 miles, of which 7.56 miles are owned, 9.41 miles are operated under trackage rights or lease from trunk line connections, and 14.09 are tracks of the Wisconsin Steel Company, the Plano Works, and other industries, for which the West Pullman pays no rental. Of the total tracks operated 11.76 miles are main track and 19.30 miles yard track and sidings. All of the main track owned, comprising 1.92 miles, is located at West Pullman and connects the Plano Works and various other plants there situated with the Chicago, Rock Island & Pacific Railway at the interchange point marked A on the accompanying

KEY TO LETTERS USED ON MAP.

- A. Interchange with C., R. I. & P.
- B. Interchange with P., C., C. & St. L.
- C. Interchange with Illinois Central (from West Pullman).
- D. Interchange with Illinois Central (from Irondale).
- E. Interchange with N. Y., C. & St. L. and R. & O.
- F. Interchange with Pullman R. R.
- G. Delivery to C., R. I. & P. (from Irondale).
- H. Delivery to Belt Ry. of Chicago.
- I. Receives from Belt Ry. of Chicago and C., R. I. & P.
- J. Receives from Indiana Harbor Belt.
- K. Interchange with Indiana Harbor Belt.
- L. Interchange with E., J. & E. and P., Ft. W. & C.
- M. Interchange with P., Ft. W. & C.

37 I. C. C.

map; with the Pittsburgh, Cincinnati, Chicago & St. Louis Railway at B, and with the Illinois Central Railroad at C. The West Pullman has trackage rights over the rails of the Illinois Central from C to a connection with the Chicago, Rock Island & Pacific at Burnside, a distance of 4.67 miles, and over the Chicago, Rock Island & Pacific for a distance of 4.04 miles from Burnside to the plant of the Wisconsin Steel Company.

Under its agreements with the Illinois Central and the Chicago, Rock Island & Pacific the West Pullman may operate over the tracks of these carriers between 8 p. m. and 5 a. m. not to exceed two trains each way unless the permission of the trunk line be obtained to operate an additional train. It pays to each of the above-named trunk lines 50 cents per car, loaded or empty, and 75 cents per engine operated over its tracks, irrespective of distance, and a minimum charge of \$5 per train. By the terms of a separate lease it is granted full, joint, and equal use of the tracks of the Chicago, Rock Island & Pacific from the plant of the Wisconsin Steel Company to the One Hundredth street yards. For this privilege it pays 2½ per cent per annum upon \$9,000, the agreed value of the right of way and tracks, and a wheelage proportional of the maintenance cost. The One Hundredth street yards are owned by the West Pullman. The West Pullman also claims as part of its main line the tracks of the Wisconsin Steel Company from their connection with the tracks of the Chicago, Rock Island & Pacific to a point near the Grand Calumet River and also to a connection with the Calumet Western Railway. Its equipment consists of 10 standard-gauge locomotives and 45 standard-gauge freight cars. It maintains public team tracks and a freight house for less-than-carload freight at West Pullman.

The West Pullman conducts a freight business exclusively. Besides serving the Plano Works and the Wisconsin Steel Company it serves nine independent industries, of which eight are located at West Pullman and one at its One Hundredth street yards. The general character of the service performed is interchange switching between the various industries served and connecting carriers, interior switching at the plants of the Wisconsin Steel Company, the Plano Works and other industries, and less-than-carload traffic either at its West Pullman freight house or by trap-car service. The following table gives an analysis of the traffic and revenues of the West Pullman for the year ending June 30, 1913, based upon the testimony presented upon the hearing in this proceeding:

Analysis of traffic and revenues of the Chicago, West Pullman & Southern Railroad for the year ended June 30, 1913.

Switching movements.	Cars moved.		Revenue.		
	Number.	Per cent of total.	Amount.	Per cent of total.	Average per car.
Plano Works.....	6,949	6.0	\$23,251.00	8.8	.....
Wisconsin Steel Co.....	100,340	86.0	200,987.50	76.4	.....
Independent industries.....	6,801	5.8	27,049.88	10.3	.....
Local between Plano Works and Wisconsin Steel Co.....	560	.5	2,930.65	1.1	.....
Less than carload.....	1,584	1.4	8,623.53	3.3	.....
Company material.....	266	.2	356.57	.1	.....
Total.....	116,510	100.0	263,190.13	100.0	.....
.....	171	.1	256.50	.1	\$1.50
.....	64,865	55.7	46,752.50	17.8	.72
.....	126	.1	180.00	.1	1.50
..... carriers:					
.....	6,778	5.8	22,994.50	8.7	3.39
.....	35,375	30.4	154,235.00	58.6	4.36
.....	6,075	5.2	20,860.88	10.2	4.02
..... Plano Works and Wisconsin					
.....	560	.5	2,930.65	1.1	5.23
Less than carload:					
Plano Works.....	526	.5	2,843.18	1.1	5.41
Wisconsin Steel Co.....					
General public.....	1,058	.9	5,780.35	2.2	5.41
Switching company material.....	366	.3	356.57	.1	.....
Total.....	116,610	100.0	263,190.13	100.0	2.26

It will be observed that 92.5 per cent of the switching movements of the West Pullman during the year ended June 30, 1913, were made for the Plano Works and the Wisconsin Steel Company, and 86.3 per cent of the revenue derived from switching was contributed by these industries. Of the traffic of these two companies 65,086 cars, yielding a revenue of \$47,009, were moved in interior plant service; 42,679 cars, yielding a revenue of \$180,072.68, were interchanged with connecting carriers, and 560 cars, yielding a revenue of \$2,930.65, were switched between Irondale and West Pullman. The interchange figures include 526 cars of less-than-carload traffic, yielding a revenue of \$2,843.18. All rates charged for interplant as well as interchange switching are published in tariffs on file with this Commission. The West Pullman issues bills of lading as an originating carrier in all cases.

The Illinois Central proposes to continue to apply the Chicago rates to and from all of the plants served by the West Pullman, as is being done by the other connecting lines, and to accord that line the same allowances which it has granted in the past. The allowances accorded by various connecting carriers are as follows: Between industries and connections at West Pullman, for hauls ranging from 0.26 to 1.88 miles, \$3 per car; between industries at West Pullman and connections at other points, for hauls ranging from 4 to 11.38

miles, \$5.50 per car; between industries at Irondale and connections at Irondale, for hauls ranging from 0.5 miles to 4 miles, \$3.50 per car; between industries at Irondale and connections at other points, with the exception of the Pittsburgh, Cincinnati, Chicago & St. Louis, for hauls ranging from 3.25 to 3.5 miles, \$5 per car. An additional allowance of \$1 per car is made in each case for switching to and from public team tracks. For switching between industries and public team tracks at Irondale and the Pittsburgh, Cincinnati, Chicago & St. Louis for distances ranging from 7.38 miles to 7.5 miles an allowance is made of \$5.50. These allowances are for cars of a minimum weight of 60,000 pounds, and in each case an additional 10 cents per net ton is allowed on cars weighing more. Allowances ranging from 2½ cents to 3¼ cents per 100 pounds are accorded on less-than-carload traffic.

The trunk lines may with propriety apply the Chicago rates to and from industries located on the line of the West Pullman, since they are located within the Chicago switching district. The measure of the allowance which may properly be granted for the switching service is different, however, if the line be only a plant facility or if it be both a plant facility and a common carrier than if it be distinctively a common carrier. The considerations which must prevail are for each case set forth in the succeeding paragraphs.

Where the industrial line acts only in the capacity of a plant facility and not a common carrier, the trunk lines need not, in the absence of unjust discrimination, make any allowance so long as they are ready to perform the switching wherever by custom and general usage the line-haul rate covers that service. *General Electric Co. v. N. Y. C. & H. R. R. Co.*, 14 I. C. C., 237; *Car Spotting Charges*, 34 I. C. C., 609, 617. Therefore an allowance in excess of the cost to the trunk line of switching to and from the plant would be unlawful. By granting more the trunk lines would in that measure be depleting their revenues. The allowance is further limited in that it may not exceed the reasonable cost to the industry of performing the service.

A common-carrier industrial line should be compensated for all costs reasonably apportionable to the service performed. *Joint Rates with Birmingham Southern R. R. Co.*, 32 I. C. C., 110. Where the service performed is interior plant service, compensation should be made by the industry served. Where it is interchange switching the question still remains "whether a charge should be made for such service in addition to the line-haul rate applicable to or from points on the rails of the trunk line at the junction." *Second Industrial Railways Case, supra*. The line-haul carriers here involved universally apply the Chicago rates to all industries located

within the Chicago switching district. The West Pullman is located within the Chicago switching district. Moreover, it has been customary to include in the service rendered under the line-haul rate to and from Chicago the movement of cars over industry tracks to convenient points for loading and unloading. For these reasons switching performed by the industrial line between industries and connecting carriers may properly be regarded as a transportation service for which the connecting carriers may pay a division of the line-haul rate. *Car Spotting Charges, supra*. In this connection it should be stated that the trunk lines are not obliged to absorb the switching charges of common-carrier industrial lines. *Manufacturers Railway Co. v. St. L., I. M. & S. Ry. Co.*, 28 I. C. C., 93; *Industrial Railways Case*, 32 I. C. C., 129; *Second Industrial Railways Case, supra*. The Commission may, however, require carriers to remove unjust discrimination occasioned by the absorption of switching charges in certain instances and not in others, under like circumstances and conditions. The Commission may also, where the facts justify such a course, require trunk lines to establish joint rates with connecting industrial lines lower than the combination on the junction point of the trunk line and the industrial line and may fix the divisions to be accorded the industrial line.

In arriving at the amount which trunk lines may allow common-carrier industrial lines for switching the following considerations should prevail: In so far as the industrial line serves the plant in interplant switching and other purely plant service the cost of such service and the investment in facilities used exclusively to perform that service must be excluded in calculating the cost of the switching service to and from the trunk lines. The investment in facilities used both for plant service and interchange switching can only be included in the proportion that they are used in interchange switching. Interior plant switching or any other service differing radically in nature from the general work of switching cars between industries and connections should be segregated as to investment and operating costs of the industrial line so far as this may be feasible. The engine hour will usually be found a safer guide than cars handled for making this general separation. For interior plant switching the industry benefited should be charged with the allocated capital and operating costs. The remaining operating and capital costs measure the maximum which may be received net for other switching, either in the form of switching charges or allowances, there being a minimum charge for the shortest switching and a somewhat higher charge for the longer distance switching. From its entire business the industrial line should not earn more than a fair return on the property devoted to the public use, less reserve for

accrued depreciation, and including material and supplies in the investment. No abnormal divisions or allowances may in any case be made, for it is evident that, by paying or permitting to be paid more than would be just and reasonable for any service performed by the industrial line, the trunk lines may be giving the controlling industry a rebate.

Attention has been called to the fact that a large proportion of the line of the West Pullman consists of trackage rights over the rails of the Illinois Central and Chicago, Rock Island & Pacific. With this should be considered the fact that a number of the connecting carriers interchange traffic with the West Pullman at points more distant from the industry served than points at which interchange might be effected. As indicated on the map, the Chicago, Rock Island & Pacific interchanges Wisconsin Steel Company traffic at G and I, the Belt Railway of Chicago at H and I, the Indiana Harbor Belt Railroad at J and K, although the lines of each reach the property of the Wisconsin Steel Company. The Pennsylvania Company, the Elgin, Joliet & Eastern Railway, and the lines which jointly operate the Calumet Western permit the industrial line to operate over their tracks without compensation in order that it may interchange traffic with them at L, J, K, and M, as shown on the map. By not interchanging at the nearest point to the industry served these carriers permit the industrial line a haul in some cases as long as 4 miles, where otherwise the haul would have been much shorter. The bearing which these facts may have upon the question under consideration in this proceeding was indicated in the original report, where with respect to one group of industrial lines we said:

* * * An industry has plant tracks which could under no conceivable conditions be considered as having any common-carrier characteristics. In order to give to them such a status a railroad is incorporated, the tracks of the plant are leased to it, and the trunk line grants trackage rights and even leases its rails to the industrially owned railroad corporation. Thereupon the industrial railroad publishes tariffs, files them with this Commission, makes reports, and as a matter of form assumes the appearance of a common carrier subject to the act, and the trunk line affords it divisions out of the rate applicable to the locality for the same service which the industry has previously performed without compensation. The shipper through its incorporated railroad is thus afforded advantages which are denied to other shippers having a smaller volume of traffic. For a trunk line carrier to offer its facilities by lease or trackage rights, to give an undue advantage to a single shipper, is unquestionably such a device as is condemned by the act.

While it can not be said that before arrangements were made for trackage rights over the lines of the Illinois Central and Chicago, Rock Island & Pacific the operations at West Pullman "could under no conceivable conditions be considered as having any common-

carrier characteristics," this would appear to have been the case as to the operations at Irondale as conducted at that time. However, it is conceivable that the operation by the industrial line of the tracks of the trunk lines might be to their mutual benefit. Thus it may be more advantageous to the Rock Island to interchange Wisconsin Steel Company shipments at G and I than at the plant of the steel company, and to permit the industrial line to use its tracks at a substantial rental in order to effect such interchange and also the interchange with other connections. The trunk lines undoubtedly have a right to lease their tracks so long as the arrangement is profitable to them and does not interfere with the performance of their public duties. The industrial line having effected such a lease may be, and in the present case is, in a position to render a common-carrier service to all of the industries located on its line. However, should the arrangement prove unprofitable to the trunk lines or hinder them in the performance of their public duties it must be looked upon as "a device condemned by the act." So also where a trunk line without unjust discrimination permits the industrial line to operate over its tracks without compensation the arrangement may be just and proper so long as it is for their mutual benefit.

To cover cases where an industrial line is permitted to operate over the tracks of connecting lines in effecting an interchange of traffic the following general rule may be laid down, namely, that in so far as the division or allowance accorded the industrial line covers the operation over the tracks of the trunk line it may not exceed the operating and investment cost to the trunk line, had it performed the same service, by more than the proportionate share which that particular traffic should bear of the compensation paid by the industrial line for the use of the tracks. This rule must be observed whether the industrial line be a mere plant facility or a common carrier, and in switching to and from independent industries as well as to and from the proprietary industry. Where the only service over the leased track is interchange switching with the trunk line from which the tracks are leased the rule laid down in the report might have been simplified by holding that the trackage charges or rental paid to the trunk line should be eliminated, and that the allowance accorded should not exceed what it would have cost the trunk line to perform the same service. The West Pullman, however, performs interchange switching from Irondale over the tracks of the Rock Island not only with that line but also with a number of other trunk lines, and also uses the leased tracks to haul cars between the plants of the Plano Works and the Wisconsin Steel Company. The same is true of the tracks leased from the Illinois Central, which connect with the Rock Island tracks at Burnside. It is evident that wherever the traffic

which moves over the tracks leased from the trunk line includes traffic other than that interchanged with that particular trunk line the trackage charge or the rental, whichever it may be, can not be eliminated. The effect, however, of the rule is that for interchange switching with the trunk line which owns the tracks the industrial line may not receive more than it would have cost the trunk line to perform the same service. If the trunk lines were to accord a higher division for the service performed over their own tracks than indicated above they would be depleting their revenues in order to enable the shipper to avail himself of the more convenient and perhaps more extensive service which an industrial line can give. The implication is not intended, however, that the divisions accorded industrial lines must necessarily equal what it would have cost the trunk line to perform the service, plus the compensation paid for the use of its tracks. The divisions should be further limited by the principles applicable where the operation is over the tracks of the industrial line. One reason for permitting an industrial line to switch over the tracks of connecting trunk lines may be that it is able to perform the service for less than it would have cost the trunk line to perform the same service. Wherever that is the case the division or allowance accorded should not exceed the operating cost of the industrial line plus interest upon whatever investment it devotes to the service in the proportion that such investment is used in interchange switching plus the proportionate share which that particular traffic should bear of the compensation paid by the industrial line for the use of the tracks. This rule should in all cases be followed in determining the proper division or allowance to be accorded for interchange switching over leased tracks with trunk lines other than the one which owns the tracks used in performing the service.

The abnormal return on the investment during the first four and one-half years of operation, to which reference has already been made, when considered in connection with the fact that the major portion of the revenues of the West Pullman is derived from interchange switching, indicates that the allowances accorded for that service are excessive. The net income from rail operations in the four-year period 1911 to 1914, inclusive, not including interest on loans, was \$113,988.39 in excess of 6 per cent on the investment, counting as investment the reported cost of the road and equipment less reserves for depreciation, with the addition of material and supplies. The excess is 15.3 per cent of the total switching revenue for the same period. If 6 per cent be taken as a fair return, the rates charged during the four-year period might have been reduced 15.3 per cent and have still been sufficiently remunerative. This would include a reduction of the rates on interior as well as interchange switching,

the relative cost of which we are not able, on the present record, to ascertain. We do not wish to intimate that a horizontal reduction of 15.3 per cent should be made in all switching charges. In the absence of testimony showing the costs properly apportionable to plant service and interchange switching no conclusion can be reached as to whether or not the former is paying its just share. Moreover, only in so far as the particular switching movement for which a charge is to be fixed makes use of the investment of the West Pullman should the charges include a return on such investment. The considerations which should prevail when all or part of the movement is over tracks of connecting trunk lines have already been outlined. It is apparent, therefore, that for some of the switching movements herein involved a cost analysis would show that a greater reduction than 15 per cent should be made and as to other movements perhaps little if any reduction should be made.

The allowances made to the West Pullman for interchange switching would particularly appear to be excessive on Wisconsin Steel Company traffic, which constitutes the greater portion of the business. Thus, as is shown in the table, 86 per cent of all cars switched and 76.4 per cent of the total switching revenue of the West Pullman was derived from Wisconsin Steel Company business. The cars moved in interchange switching at the plant of the Wisconsin Steel Company constituted 30.4 per cent of the total number of cars switched and contributed 58.6 per cent of the total revenues derived from switching movements. On this business the allowances accorded the West Pullman would, in some instances at least, appear to be excessive. This is especially evident where the trunk lines permit the West Pullman to operate over their tracks and accord a division of \$3.50 for movements ranging from 1.25 to 3.75 miles. The West Pullman has made no investment at Irondale to enable it to perform the switching service between the Wisconsin Steel Company's plant and most of its connections. In many cases the operating costs are the only expenses incurred in performing this service. In those instances where use is made of the One Hundredth street yards only so much of the investment represented by these tracks as may be reasonably apportioned to the service should be included in arriving at proper divisions. Where the movement entails the payment of trackage charges the divisions should, of course, be large enough to cover operating expenses plus these additional costs.

All carriers which accept interchange at more distant points than might otherwise have been selected should carefully consider whether or not this arrangement is proper in the light of what has been said above. We see no reason upon the present record for charging more for interchange between team tracks and connecting

carriers than is charged for interchange between industries and connecting carriers.

All of the carriers granting divisions to the West Pullman, the Illinois Central included, will be expected to revise their joint rate or switching arrangements with that line so as to conform with the principles announced herein and to file with us a complete and specific statement of the arrangement entered into, immediately upon consummation thereof, as required by the order in the original report in this proceeding. 34 I. C. C., 596. Such a revision is not only demanded from the standpoint of equality and justice among shippers, but also from the standpoint of conserving the revenues of the trunk lines. The carriers have the necessary information at their disposal and should not lack the courage to act accordingly.

HARLAN, *Commissioner*, concurring:

The conclusions announced in the foregoing report appear to fall short of the well-intended purpose of the Commission in three particulars:

1. A preferential switching service results from the trackage arrangement which permits the movement of traffic between the plant of the Wisconsin Steel Company and the Plano Works at a charge less than 1 cent per 100 pounds, with a minimum of 60,000 pounds per car, which must be paid for the same character of service by all other shippers within the Chicago switching district. It is true that in form the Plano Works and the Wisconsin Steel Company pay to the Chicago, West Pullman & Southern a substantial switching charge, but as the money does not in fact pass out of the hands of the interests that control the three properties, the switching service is actually obtained for a trackage charge of 50 cents per car and 75 cents per locomotive plus the direct operating cost to the Chicago, West Pullman & Southern of performing it. Such a movement is within the state, but the preferential effect of the arrangement upon interstate traffic is obvious; as it is in any case where a trunk line gives to a railroad in which a shipper is interested a trackage right for a consideration less than the legal transportation rates that other shippers are required to pay.

2. The allowances approved include compensation out of the trunk line revenues for handling traffic to and from points within the plant inclosures of the industrial companies. This is not a public transportation service, but a special and private service that the majority of shippers are themselves required to perform at their own expense. In *General Electric Co. v. N. Y. C. & H. R. R. R. Co.*, 14 I. C. C., 237; the *Industrial Railways Case*, 29 I. C. C., 212; and in my separate reports in *Manufacturers Railway Co. v. St. L., I. M. & S.*

Ry. Co., 28 I. C. C., 93, 111; 32 I. C. C., 100, 106; *Joint Rates with Birmingham Southern R. R. Co.*, 32 I. C. C., 110, 124; *Rates in Chicago Switching District*, 34 I. C. C., 234, 242; *Trap or Ferry Car Service Charges*, 34 I. C. C., 516, 517, 548; *Boardman Co. v. S. P. Co.*, 37 I. C. C., 81, 87, my views upon this general question have been fully stated.

3. The tacit approval by the Commission of a transportation practice that violates the spirit of the commodities clause in effect construes this provision of the statute as if it was intended to permit in one form that which it prohibits in another. In *The Tap Line Cases*, 234 U. S., 1, the Supreme Court described the commodities clause as an effort by the Congress "to divorce transportation from production and manufacture and to make transportation a business of and by itself unallied with manufacture and production." Progress in this direction, however, is hampered when, by sacrificing this section in the approval of transportation practices of the character here mentioned, there results a real and substantial subversion of its dominant principle.

Notwithstanding the objectionable particulars mentioned, the conclusions of the foregoing report go far toward eliminating the transportation concessions that reach the interests which, having through stock ownership the dual character of shipper and carrier, benefit financially from the operation of the track facilities that serve their manufacturing plants; and to this extent I concur.

THE OCEAN STEAMSHIP COMPANY OF SAVANNAH.

No. 6672.

APPLICATION OF THE CENTRAL OF GEORGIA RAILWAY COMPANY, UNDER THE PROVISIONS OF SECTION 5 OF THE ACT TO REGULATE COMMERCE, AS AMENDED BY SECTION 11 OF THE PANAMA CANAL ACT, RELATIVE TO THE OCEAN STEAMSHIP COMPANY OF SAVANNAH.

Submitted May 18, 1915. Decided December 23, 1915.

Upon application of the Central of Georgia Railway Company, to which the Illinois Central Railroad Company was made a party in interest by order of the Commission, under the provisions of section 5 of the act to regulate commerce, as amended by the Panama Canal act, for an extension of time beyond July 1, 1914, during which operation of the Ocean Steamship Company of Savannah might be continued; *Held:*

1. Both the Central of Georgia Railway Company and Illinois Central Railroad Company may or do compete with the steamship company within the meaning of the act.
2. The present operation of the steamship company is in the interest of the public and of advantage to the convenience and commerce of the people; its continued ownership and operation by the Central of Georgia Railway Company will neither exclude, prevent, nor reduce competition on the routes by water under consideration; and the application should be granted.
3. All the rates, fares, schedules, and regulations applicable to the movement by the steamship company of traffic subject to the act must be filed with the Commission and posted as required by the act to regulate commerce and the rules and regulations of the Commission.

A. R. Lawton and R. Walton Moore for Central of Georgia Railway Company.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

The Central of Georgia Railway Company, by application filed March 2, 1914, petitions the Commission under section 5 of the act to regulate commerce, as amended by section 11 of the Panama Canal act, that it be permitted to operate beyond July 1, 1914, the Ocean Steamship Company of Savannah. The Commission on February 10, 1915, ordered that the Illinois Central Railroad Company be made a party in interest to the application of the Central of Georgia.

The Central of Georgia operates approximately 1,924 miles of main track located in three states: 1,340.5 miles in Georgia, 579.5 miles in Alabama, and 4 miles in Tennessee. Its eastern terminus is Savannah, Ga., and its western termini Chattanooga, Tenn., Atlanta, Ga., Birmingham and Montgomery, Ala. At Birmingham connection is made with the Illinois Central, which extends from Chicago, Ill., through St. Louis, Mo., and Memphis, Tenn., to New Orleans, La.

The Ocean Steamship Company, hereinafter referred to as the steamship company, operates two lines: One between Savannah and Boston, two sailings a week; the other between Savannah and New York, three sailings a week. It carries both passengers and package freight and is a party to ocean-and-rail rates between various sections of the United States. Petitioners allege that the operations of the steamship company are confined mainly to the movement of traffic between the south and southwest and the north Atlantic states.

The steamship company was organized in 1874 by the Central Railroad & Banking Company of Georgia. The interest of the Central of Georgia in the steamship company dates from 1895, when the Central of Georgia was organized as the successor of the Central Railroad & Banking Company. With the exception of directors' shares, all of the capital stock of the steamship company is held in trust for the Central of Georgia. All of the capital stock of the Central of Georgia, except directors' shares, was acquired by the Illinois Central in 1909. The president of the Illinois Central is also chairman of the board of directors of both the steamship company and the Central of Georgia. Both petitioners and the steamship company have certain directors in common. These facts establish that not only the Central of Georgia, but also the Illinois Central, has such an interest in the steamship company as is defined in section 5 of the act.

The issues presented for determination are: Do or may either or both of the petitioners compete for traffic with the steamship company, and if so, is the existing service by water in the interest of the public and of advantage to the convenience and commerce of the people, and will a continuance thereof exclude, prevent, or reduce competition on the route by water?

It is urged that the Illinois Central and the Central of Georgia do not and can not compete for traffic with the steamship company within the meaning of the act. It is argued that the steamship company is but an extension of the rails of the Central of Georgia, and reference is made to the history of both the Central of Georgia and the steamship company in support of this contention. It is alleged that as

early as 1848 the Central Railroad & Banking Company showed keen appreciation of the traffic which might be developed for its railway by the encouragement of a regular steamship line between Savannah and the northeastern ports. In 1872 the banking company acquired six vessels, which were subsequently sold to the steamship company upon its organization in 1874. It is asserted that through ownership of the steamship company and working arrangements with the Merchants & Miners Transportation Company, hereinafter described, the Central of Georgia forms through routes to northeastern points in competition with other routes which, in the absence of steamer connections, it would be forced to patronize and accept short hauls on traffic; and that such a condition of dependency might relegate the Central of Georgia to an obscure and unimportant position. In short it is alleged that the chief motive actuating the Central of Georgia in its retention of vessel property is the maintenance and development of routes to the northeast.

Traffic between points in central freight association and trunk line territories and Savannah may move all rail or rail and ocean. The record discloses that from Chicago to Savannah joint through rail-and-ocean class rates are in effect via New York and the steamship company; between the same points all-rail class rates, higher than the rail-and-ocean rates, are in effect applicable over the rails of the Illinois Central and the Central of Georgia. It is testified that a very large percentage of the traffic from central freight association territory to Savannah moves rail and ocean because the rates via this route are lower than the all-rail rates. Although the steamship company is a party to rail-and-ocean rates from central freight association territory to Savannah, it is asserted that the steamship company handles but a very small portion of this traffic, practically all of it moving through Baltimore over the Merchants & Miners Transportation Company. This is due, it is said, to the lower rail arbitraries to Baltimore than to New York, which leave the Merchants & Miners Transportation Company attractive divisions of the through rates and thus stimulate its activity in soliciting such traffic, whereas the divisions received out of the through rates by the steamship company are alleged not to be remunerative. Moreover, the routes are shorter via Baltimore than via New York, with respect to both the rail and the water hauls. It is testified that the steamship company does not solicit freight from central freight association territory and that such traffic as it does handle is sporadic and negligible in quantity; that such traffic as moves all rail from central freight association territory to Savannah over the Illinois Central in connection with the Central of Georgia is but a small portion of the total all-rail movement and is restricted

to refrigerator freight, bulky goods, tank cars, and heavy machinery, none of which is suitable for carriage by water.

The volume of traffic handled by the steamship company between central freight association territory and Savannah is negligible; and it is apparently true that the steamship company does not solicit or seek such traffic. But neither of these factors is controlling in determining whether or not possibility of competition exists. Potential competition may exist via a route in the absence of any tonnage whatever. It is not altogether metaphorical to say that each route competes with every other route. If the volition of the water carrier is to determine whether or not competition may exist, a water line in active competition with its railroad owner for certain traffic might avoid the provisions of the act by temporarily withdrawing from such competitive business. To concede this would render the amendment to the act impotent to accomplish one of its prime purposes—the preservation of competition on the route by water. A letter was offered in evidence, written in 1914 by the general freight agent of the Illinois Central to the chairman of the Southeastern Mississippi Valley Association, requesting that the question of advancing the rail-and-ocean rates from central freight association territory be listed for consideration. The following is an excerpt from the letter:

We listed the subject in the hope that we might be able to convince our coastwise friends of the desirability of advancing their rates from north Atlantic to the south Atlantic ports so that the through rates from points in central freight association territory, including the Ohio River crossings, and from points west thereof, should not be lower through the north Atlantic ports than the all-rail rates through the Ohio River and Virginia gateways; certainly the rates from this western territory to south Atlantic ports via the north Atlantic ports should not be less than the all-rail rates except to the extent of the marine insurance differentials, and it is our view that they should not be less than the all-rail rates to any extent.

The vice president of the Illinois Central testified that as head of the traffic department of that road he is active in promoting the interests of the all-rail routes between central freight association territory and Savannah in competition with any rail-and-water routes through north Atlantic ports, and that the Illinois Central would oppose any movement to increase the differential of the ocean-and-rail rates under the all-rail rates. With respect to traffic between central freight association territory and Savannah it is clear that possibility of competition does exist between the rail-and-ocean route to which the steamship company is a party and the all-rail route to which the Illinois Central and Central of Georgia are parties.

The record discloses other evidence of competition or possibility of competition between petitioners and the steamship company. Both the Illinois Central and Central of Georgia are parties to tariffs

naming joint all-rail rates between New York and Memphis; the steamship company is a party to tariffs naming joint ocean-and-rail rates between the same points. From New York to St. Louis, Mo., and points west of the Mississippi River the ocean-and-rail rates are differentials under the all-rail rates; similarly there are differentials in the ocean-and-rail rates to southeastern territory as far west as a line through Chattanooga and Mobile. There is a substantial movement of traffic via the steamship company to both of these territories. Between the Mississippi River and the section bounded on the east by the Chattanooga-Mobile line is a strip of territory served by the Illinois Central Railroad, of which Memphis, Tenn., is representative. Southbound from New York to Memphis the all-rail rates are the same as the ocean-and-rail rates; northbound from Memphis to New York the ocean-and-rail class rates are differentials lower than the all-rail class rates. It is admitted, however, that the northbound class rates are of small importance, as there is practically no movement thereunder. Northbound lumber and cotton are the chief commodities moving from Memphis to New York. Although the ocean-and-rail rates on lumber are differentials under the all-rail rates, it is testified that the lumber movement is practically confined to the all-rail route. The ocean-and-rail rates on cotton are the same as the all-rail rates. The steamship company has made efforts to have differential rates established to and from Memphis, but without success. The freight traffic manager of the steamship company testified that—

Being an ocean-and-rail man I should say we should enjoy a differential to Memphis. The rail-and-water line should have a lower scale of rates than the all-rail line, because of transshipment and liability to damage due to many handlings of freight.

He further testified that the steamship company had been unsuccessful in its past efforts to secure a readjustment of rates to Memphis. The general freight agent of the Illinois Central testified that his company would combat any effort to establish the ocean-and-rail rates from New York to Memphis territory on a differential basis.

It is contended that the competition contemplated by the amendment of the act is not competition of routes, but direct and parallel competition between the rails of the owning carrier and its boat line. With this interpretation of the act we do not agree. *Lake Line Applications under Panama Canal Act*, 33 I. C. C., 699.

Upon all the facts of record we find that both the Central of Georgia and Illinois Central may or do compete with the steamship company within the meaning of the act.

The second issue will now be discussed. The operations of the steamship company have been conducted on a profitable basis; since

1909 the company has paid dividends aggregating over 160 per cent of its capital stock. Since 1874 its fleet has been renewed several times, having been entirely rebuilt within the past eight years. The present fleet consists of nine first-class, modern ships, which are said to be adequate for all available traffic. During the last 10 years its volume of business has increased over 25 per cent. The steamship company is the only line offering a regular service throughout the year between Savannah and New York and between Savannah and Boston. While the chairman of its board is also chairman of the board of the Central of Georgia and is president of the Illinois Central, the steamship company has no operating or traffic official in common with either the Illinois Central or Central of Georgia, and the conduct of its affairs appears to be entirely independent. The record discloses no attempt by the Central of Georgia to control or dominate the traffic or operating departments of the steamship company; nor does it appear that the Illinois Central has used its stock control of the Central of Georgia to influence the affairs of the steamship company.

The ship-side terminals at Savannah owned by the steamship company occupy nearly 1 mile of frontage on the Savannah River and provide 26 steamer wharves, each capable of docking an ocean-going ship. On June 30, 1914, the value of this entire terminal property was estimated by petitioner at \$2,000,000. At the present time material improvements are being made to these terminals, at a cost of approximately \$1,000,000. The steamship company reserves for its own use but four berths, the remainder of the terminal property being leased to the Central of Georgia, under an agreement which permits subletting only with the consent of the owner and as a condition the steamship company requires covenants that its property at Savannah will not be used for the operation of lines running between Savannah and New York and Boston. The Central of Georgia allows foreign tramp steamers to use the docks without rental, but collects wharfage.

The only other regular coastwise line using the docks of the steamship company at Savannah is the Merchants & Miners Transportation Company, which operates two lines from Savannah, one to Baltimore and the other to Philadelphia. The lease of the Merchants & Miners Transportation Company provides that if the docks are used for the operation of steamship lines to either New York or Boston, the lessor shall be at liberty to terminate the lease. In the last two years the Central of Georgia has spent over \$300,000 in building modern sheds and wharves at Savannah for the use of the Merchants & Miners Transportation Company. The general traffic manager of the Merchants & Miners Transportation Company testified that the treatment of his company by the Central of Georgia

is entirely satisfactory, and that both his company and the steamship company are accorded the same privileges and divisions by the rail line.

The Merchants & Miners Transportation Company has occupied its dock space at Savannah under various agreements and leases to which both the Central of Georgia and the steamship company have been parties. In 1897 a traffic agreement was entered into whereby, in consideration of the withdrawal by the steamship company of its Philadelphia service, the Merchants & Miners Transportation Company agreed not to compete with the steamship company in certain defined territory, hereinafter described. This agreement was superseded by a new agreement in 1899 which preserved the territorial restriction. In 1913 this agreement was canceled, but it is admitted that at the present time the Merchants & Miners Transportation Company takes no traffic originating in or destined to so-called steamship territory. The territories allotted to the respective steamship companies are as follows: To the Ocean Steamship Company, New York and Pennsylvania territory north of a line from Trenton, N. J., through Easton and Sayre, Pa., to Buffalo, N. Y.; to the Merchants & Miners Transportation Company, territory south of said line. While the former contracts have been abrogated, it is stated that both steamship companies find it in their interest to continue observing the division of territory described.

Petitioner maintains that while this arrangement restricts territory between the two water lines at their northern ends, the result, as a whole, has been the encouragement of competition, because the Central of Georgia was originally at liberty to confine its entire business at Savannah to the Ocean Steamship Company, but under the arrangement referred to opened its rails to the Merchants & Miners Transportation Company. It is alleged, moreover, that a "neutral territory" lies between the two territories described, and for traffic from this strip both steamship companies are in active competition. It is argued that this division of territory is natural, actuated by sound business judgment, and that it prevents wasteful competition; that if the point of origin of traffic is nearer to Philadelphia than to New York the rail arbitrary is lower to Philadelphia, leaving a greater balance of the through rate available for division between the water carrier and the rail lines beyond Savannah. The same condition is true with reference to points nearer to New York. Petitioner asserts that the observance of such a division of territory does not create a monopoly for either the steamship company or the Merchants & Miners Transportation Company, as shippers in the territory involved still have the choice of a number of other routes, both all rail and rail and water, to Savannah.

It is testified that the steamship company is absolutely impartial in its treatment of all the rail carriers reaching Savannah. Subject to the exception noted below this statement is apparently true. The Southern, Atlantic Coast Line, and Seaboard Air Line railways serve Savannah and with these lines, as well as with the Central of Georgia, the steamship company is a party to ocean-and-rail rates to practically all points in the southeast. The steamship company is also a party to joint rates with the Savannah River Barge Line, which operates on the Savannah River between Savannah and Augusta, and is said to be directly competitive with the all-rail route of the Central of Georgia between the same points. About two years ago the steamship company canceled its joint rates in connection with the Atlantic Coast Line and Seaboard Air Line railways to St. Louis, Mo., and points west thereof. The Seaboard Air Line protested this action. Petitioner seeks to justify the cancellation by asserting that the protest was insincere and not pressed; that both the Atlantic Coast Line and Seaboard Air Line are parties to ocean-and-rail rates to St. Louis via Norfolk in connection with the Old Dominion Steamship Company, which secure them longer rail hauls than via Savannah. The vice president of the Atlantic Coast Line in charge of traffic corroborated this contention in so far as his line was concerned and testified that the treatment accorded the Atlantic Coast Line by the steamship company is entirely satisfactory. The Central of Georgia operates an express freight service from Savannah to the west every steamer day, and it is alleged that neither the Atlantic Coast Line nor Seaboard Air Line would be justified in attempting to compete with this superior service. The record does not disclose that the Seaboard Air Line at the present time desires joint rates to St. Louis with the steamship company.

Upon all the facts of record we are of opinion and find that the present operation of the steamship company as a whole is in the interest of the public; that it is of advantage to the convenience and commerce of the people; and that its continued ownership and operation by the Central of Georgia, as at present conducted, will neither exclude, prevent, nor reduce competition on the routes by water under consideration, and that the application should be granted, subject to such further order or orders as may hereafter be entered by the Commission.

All the rates, fares, schedules, and regulations applicable to the movement by the steamship company of traffic subject to the act must be filed with the Commission and posted as required by the act to regulate commerce and regulations of the Commission, on or before March 1, 1916.

The requirement of section 6 that 30 days' public notice of change in rates be given may work a disadvantage to the steamship company in instances where it is forced to meet the port to port competition of water carriers not required to file tariffs. With respect to such traffic petition may be filed with the Commission for continuing permission to publish, file, and make effective on less than statutory notice lower rates on specific commodities. Such permission will not, however, authorize the establishment on short notice of rates higher than those in effect when permission is granted.

An appropriate order will be entered.



INVESTIGATION AND SUSPENSION DOCKET NO. 669.
COAL FROM COLORADO AND WYOMING MINES.

Submitted October 18, 1915. Decided December 20, 1915.

Proposed increased rates on bituminous lump coal in carloads from mines in Colorado and Wyoming to destinations in Nebraska and Colorado on the lines of the Union Pacific Railroad not justified.

H. A. Scandrett for Union Pacific Railroad Company.

Carle Whitehead and *A. L. Vogl* for Northern Colorado Coal Company, protestant.

J. V. Sickman for Frederick Fuel Company and other protestants.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Upon protests of the Northern Colorado Coal Company, of Coalmont, Colo., and of coal producers in the Erie district of Colorado, the operation of certain schedules contained in tariffs of the Union Pacific Railroad Company was suspended by the Commission from June 30, 1915, until April 28, 1916, pending investigation as to the reasonableness of certain proposed increased rates on bituminous lump coal from Hanna and other points in Wyoming taking the same rates, and from Erie and other points in the northern Colorado lignite fields, to destinations on the lines of the respondent in Colorado and Nebraska.

The proposed increases from Hanna range from 10 to 50 cents per net ton, while those from the northern Colorado mines are in some

cases as much as 75 cents. The suspended tariffs also carry some reductions. It was stated on behalf of the respondent that the purpose was to effect a better alignment of rates from the Rock Spring and Hanna mines in Wyoming and the northern Colorado mines. No effort was made to justify the proposed increased rates, and at the hearing the respondent proposed to withdraw the suspended tariffs and to publish tariffs in which the only increases would be from the Hanna mines to points in Nebraska west of and including Hindrey. Reductions are now proposed to respondent's stations east of Grand Island, Nebr. This proposed adjustment would result in making the Hanna rates lower than those from Rock Springs by 75 cents to respondent's main and branch line stations west of and including North Platte and by 50 cents to its stations east thereof. The rate now proposed to North Platte and certain intermediate points is 25 cents per ton higher than the rate prescribed as reasonable to those points in *Nebraska State Commission v. U. P. R. R. Co.*, 13 I. C. C., 349, decided April 6, 1908. No changes are proposed in the rates on bituminous slack coal.

No schedule on the basis of this proposal made at the hearing, and then first brought to the attention of the protestants, has been filed with the Commission. The Hanna mines were not represented at the hearing. Upon the record herein we are of opinion, and find, that the proposed increased rates contained in the tariffs under suspension have not been justified. An order will be issued requiring their cancellation.

87 I. C. C.

PENINSULAR & OCCIDENTAL STEAMSHIP COMPANY.

No. 6914.

APPLICATIONS OF THE FLORIDA EAST COAST RAILWAY COMPANY AND ATLANTIC COAST LINE RAILROAD COMPANY UNDER SECTION 5 OF THE ACT TO REGULATE COMMERCE, AS AMENDED BY SECTION 11 OF THE PANAMA CANAL ACT, IN CONNECTION WITH THE OPERATION OF THE PENINSULAR & OCCIDENTAL STEAMSHIP COMPANY.

Submitted May 18, 1915. Decided December 23, 1915.

Upon applications of the Florida East Coast Railway Company and the Atlantic Coast Line Railroad Company, under the provisions of section 5 of the act to regulate commerce, as amended by the Panama Canal act, for an extension of time beyond July 1, 1914, during which to continue the operation of the Peninsular & Occidental Steamship Company; Held:

- 1. Neither the Atlantic Coast Line Railroad nor the Florida East Coast Railway does or may compete with the steamship company in its present operation between Miami and Nassau, and as to that service its continued operation will not be in violation of the provisions of section 5 of the act.**
- 2. The Florida East Coast Railway may or does compete with the steamship company for traffic moving between Jacksonville and Key West.**
- 3. The Florida East Coast Railway may or does compete with the steamship company for traffic moving between Jacksonville and Havana.**
- 4. The Atlantic Coast Line Railroad may or does compete with the steamship company for traffic moving between points north of Jacksonville and Key West and Havana.**
- 5. The operation of the steamship company is in the interest of the public and of advantage to the convenience and commerce of the people.**
- 6. Final action deferred and case held open for 60 days pending revision by petitioners of their rates and the divisions thereof in harmony with the views expressed herein.**
- 7. All the rates, fares, schedules, and regulations applicable to the movement by the steamship company of traffic subject to the act must be filed with the Commission and posted as required by the act to regulate commerce and the rules and regulations of the Commission.**

Alexander Hamilton for Atlantic Coast Line Railroad Company.

A. V. S. Smith for Florida East Coast Railway.

R. Walton Moore for Atlantic Coast Line Railroad Company and Florida East Coast Railway.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

The Florida East Coast Railway Company and the Atlantic Coast Line Railroad Company, by separate applications, filed respectively May 21, 1914, and February 16, 1914, petition the Commission under section 5 of the act to regulate commerce, as amended by section 11 of the Panama Canal act, that they be permitted to continue their joint ownership of, and to operate beyond July 1, 1914, the Peninsular & Occidental Steamship Company.

The Florida East Coast Railway Company, hereinafter referred to as the East Coast, owns and operates 744 miles of railroad, located entirely within the state of Florida. Its main line extends south along the east coast of Florida from Jacksonville to Key West. At Jacksonville it connects with the Atlantic Coast Line, the Seaboard Air Line, the Southern, and the Georgia Southern & Florida railways.

The Atlantic Coast Line Railroad Company, hereinafter referred to as the Coast Line, owns and operates 4,412 miles of railroad, extending through the states of Virginia, North Carolina, South Carolina, Georgia, and Florida. Its northern termini are Richmond and Pinners Point, Va., and its southern termini Port Tampa, Punta Gorda, and Fort Myers, Fla. That portion of the Coast Line located in Florida extends for the most part through the central portion of the state, with lateral lines to the west coast.

The Peninsular & Occidental Steamship Company, hereinafter referred to as the steamship company, is a corporation organized under the laws of the state of Connecticut. It owns and operates three steamboats engaged in the transportation of freight and passengers on the following routes: (1) Between Miami, Fla., and Nassau, Bahama Islands; (2) between Key West, Fla., and Havana, Cuba; and (3) between Port Tampa, Fla., which is about 9 miles from Tampa, Fla., and Havana via Key West. Additional freight boats have been chartered in the past.

The steamship company is a party with the Coast Line and East Coast to through routes between many points in the United States and Havana, Cuba, via both Port Tampa and Key West. It is also a party with the East Coast to through routes between points in this country and Nassau, via Miami, Fla.

A brief history of the origin and development of the steamship company is relevant. Prior to 1900 the Plant system of railroads controlled a boat line known as the Southeastern Steamship Company, which operated four boats between Port Tampa and Havana via Key West, and the East Coast controlled a boat line known as the Florida East Coast Steamship Company, which operated four boats—one between Miami and Nassau and three between Miami and

Havana via Key West. About 1900 these two lines were merged into the Peninsular & Occidental Steamship Company, which thus began its existence with eight boats. The capital stock of the new company was divided equally between the Plant system and the East Coast. In 1902 the Coast Line acquired the Plant system, including its one-half interest in the steamship company. About 1904 the steamship company sold five of its boats, which have not been replaced. Originally the most southerly terminus of the East Coast was St. Augustine. By degrees its rails were extended south; in 1896 Miami was reached; in 1908, Knights Key; and in 1912, Key West. The first steamship service operated by the East Coast was from Miami, but with the successive extensions of its rails, first to Knights Key and later Key West, this steamship service has been gradually shortened.

The issues presented for determination are: Do or may either or both of the petitioners compete for traffic with the steamship company, and if so, is the existing service by water in the interest of the public and of advantage to the convenience and commerce of the people, and will a continuance of the operation thereof exclude, prevent, or reduce competition on the routes by water?

Petitioners contend that they are not, and can not be, in competition with the steamship company, as the steamship company is but an extension of their respective rail lines. It is urged that the purpose of the amendment of the act was only to exclude railroads from operating vessels parallel to and in direct competition with their tracks. We can not agree with this contention. A rail carrier by participating in a through route between two termini only one of which is reached by its rails in fact serves both termini, and may compete within the meaning of section 5 as amended with steamers operating as part of another through route between the same termini.

It does not appear from the record that as at present operated there is or may be competition between petitioners and the steamship company in its operation between Miami and Nassau, and it therefore follows that the continued operation of this service is not, and will not be, in violation of the provisions of the act.

The record discloses that joint through rates are in effect from Jacksonville to Key West via the Coast Line to Port Tampa, thence via the steamship company. The East Coast also offers a direct all-rail route from Jacksonville to Key West. We find that the East Coast may or does compete with the steamship company for traffic moving between Jacksonville and Key West within the meaning of the act.

On January 6, 1915, the East Coast inaugurated a car-ferry service between Key West and Havana, a distance of 105 miles. At the present time one ferryboat, representing an investment of approxi-

mately \$650,000, is being operated. It has a capacity of 30 cars, or about 600 tons of freight confined in cars, and can make one round trip in 24 hours. The ferryboat is not adapted to passenger traffic, and does not carry mail or express matter. It is testified that the ferry operations are and will be confined to freight contained in cars, in both carload and less-than-carload quantities. It is further testified that the car ferry is an evolution of the service previously afforded by the steamship company between Key West and Havana; that the heavy through freight traffic, built up and fostered by the East Coast, had proved greater than the steamship company could handle with its facilities, yet insufficient to justify its purchasing or chartering additional boats to accommodate the traffic. Witness for the East Coast emphasized the revolutionary effect which it is anticipated the car-ferry service will have upon traffic between the United States and Cuba. He expressed the opinion that eventually a very large part of all the freight moving between Cuba and the United States would be carried by the car-ferry line. An arrangement for the through carriage of freight between Havana and points in the United States north of and including Jacksonville is in effect via the car ferry and East Coast. This route is referred to as the "all-rail route," and in many instances the through rates in effect over it are higher than the rail-and-water rates applying between Havana and points in the United States via the Gulf and Atlantic ports.

Petitioners urge that there is and can be no competition between the East Coast in connection with its car ferry and the steamship company on traffic to and from Havana for the reason that the car ferry is, in fact, a separate and distinct water line, and the act does not contemplate competition between two or more water lines plying between the United States and a foreign country; moreover, that the steamship company is essentially a passenger line, whereas the ferry line carries freight only in cars, without breaking bulk at Key West.

The wording of the act with respect to ferries is clear. Section 1 provides:

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad * * *.

And section 5 provides:

* * * with which said railroad, or other carrier aforesaid, does or may compete for traffic, or any vessel carrying freight or passengers upon said water route or elsewhere with which said railroad, or other carrier aforesaid, does or may compete for traffic.

That the car ferry of the East Coast is such as is embraced in the term "railroad" as defined in the act is further attested by its opera-

tion and the manner in which it is regarded by officials of the East Coast. Through the use of the ferry carload freight is hauled without transshipment between the United States and Cuba. American freight cars are delivered at Havana to Cuban railways and hauled to various inland points for unloading; when loaded again they are returned to the rails of the East Coast at Key West for carriage to various points in the United States. The assistant to the president of the East Coast, in a letter to the Chairman of the Commission, dated December 5, 1913, stated:

I am glad to note that the Commission sees no objection to the extension of the service of our company by establishing a car ferry between Key West and Havana, Cuba, and that there is no reason for a petition under the Panama Canal act, the service being simply an extension of our line of railway and the water service, providing no possibility of competition between the water carrier and the railroad.

Our conclusion is that this car ferry is to be viewed simply as an extension of the line of railway of the East Coast. Furthermore, as section 1 of the act includes shipments to and from foreign countries, and the phrase "for traffic" occurring in section 5 is in no wise limited, it is immaterial whether or not the traffic involved is foreign. *Application S. P. Co. in re Operation S. S. Co.*, 32 I. C. C., 690.

Between 1908 and 1915, to accommodate through freight moving to Cuba over the East Coast, the steamship company chartered boats from year to year which were operated first from Knights Key and later from Key West to Havana. This special service was maintained at a loss. In 1915, upon the establishment of the car ferry described above, these chartered boats were discontinued, and the freight which they formerly carried was surrendered by the steamship company to the ferry line. It is clear, therefore, that, regardless of the dissimilarity of the traffic handled at the present time by the steamship company and ferry line the former company carried, prior to January, 1915, a large proportion of the traffic now handled by the car ferry. In this connection petitioners argue that inasmuch as heavy through freight is not considered desirable traffic by the steamship company because of its limited facilities, and is not sought or desired by the latter, it can not be considered competitive traffic within the meaning of the act. This contention is unsound. Whether or not a steamship company competes for a certain class of traffic is largely a matter of policy shaped by its owners. To concede that the possibility of competition depends on the volition of the water carrier would defeat the evident purpose of the amendment to restore and maintain competition in instances where rail carriers had secured the control of a potentially competitive water line.

The record discloses three through routes in effect from Jacksonville to Havana: (1) Over the Coast Line via Port Tampa in con-

nection with the steamship company; (2) over the East Coast via Key West in connection with the steamship company; and (3) over the East Coast via Key West in connection with the car-ferry line. We find that the East Coast may or does compete with the steamship company for traffic moving between Jacksonville and Havana.

The record further discloses that the Coast Line connects with the East Coast at Jacksonville and is a party with that company to through routes from points north of Jacksonville to Havana via Key West. As previously observed, the Coast Line is also a party with the steamship company to through routes from Jacksonville and points north thereof to Key West and Havana via Port Tampa. In this connection it is testified that through passenger traffic to Havana via Port Tampa is insignificant; that passengers prefer to use the route via Key West because of the shorter water haul. The movement of freight to and from Havana over the East Coast via Key West is, according to one witness, approximately twenty times as great as the movement over the Coast Line via Port Tampa. It is admitted that the Coast Line does not solicit through freight via Port Tampa and delivers all unrouted southbound freight which it is able to control to the East Coast at Jacksonville, which results in the Coast Line short hauling itself 249 miles, the distance from Jacksonville to Port Tampa. In explanation of this it is stated that the steamship company is primarily a passenger carrier; that the route of the East Coast via Key West is the more natural one for the movement of through traffic, both passenger and freight, because it involves a shorter water haul, and that the terminal facilities of the steamship company at Port Tampa are inadequate to care for a heavy movement of through freight. The more controlling reason, however, appears to be that the Coast Line and East Coast are parties to a traffic arrangement whereby the East Coast agrees to divide its northbound freight between its various connections at Jacksonville in proportion to the amount of southbound freight which it receives from them. In order to secure as much northbound freight as possible from the East Coast at Jacksonville it appears that the Coast Line influences southbound freight so far as possible to move over the East Coast route in preference to the steamship route via Port Tampa.

Upon the record we find that the Coast Line may or does compete with the steamship company for traffic moving between points north of Jacksonville and Key West and Havana.

We come now to consider whether or not a continuance of the present operation of the steamship company by petitioners will be in the interest of the public and of advantage to the convenience and

commerce of the people, and will neither exclude, prevent, nor reduce competition on the route by water.

The steamship company is the only line affording a regular service the year round between Florida and Cuba. Its two lines in the Havana service are operated on a schedule which affords Key West a daily service, except Sunday, and Port Tampa four trips a week during the winter. During the summer the Port Tampa service is reduced to three trips a week. It is asserted and not contradicted that experience has demonstrated that independent lines and tramp boats operate between Cuba and Florida only during the winter when a large volume of traffic is available, and seek other routes during the summer when traffic to and from Florida is light. Passengers constitute a large proportion of the steamship company's traffic. The record discloses that during 1914 it carried 68 per cent of all the passenger traffic between the United States and Cuba. Package freight, express matter, and the United States mails also are carried over all routes.

From a financial viewpoint the operations of the steamship company have not been a success; at no time has it been self-supporting. It is now indebted to each petitioner in the sum of approximately \$300,000, and it is testified that a further indebtedness of about \$100,000 to each of its owners is soon to be incurred to enable the steamship company to pay its current debts and make necessary repairs on its boats. In this connection it is asserted that only the financial strength of petitioners has maintained the steamship company in service though operating at a loss. It is alleged that it is doubtful whether or not the steamship company could continue to operate if separated from its rail owners because unprofitable operation in the past would be a deterrent to the investment of independent capital.

The population of both Tampa and Key West is largely of Cuban nationality or extraction and the business of these communities is closely related to Cuban affairs. In both cities the manufacture of cigars is an important, if not the most important, industry, and much of the tobacco used is brought from Cuba by the steamship company. Petitioners contend that the regular service of the steamship company between Port Tampa and Havana via Key West has been instrumental in the development of both freight and passenger traffic between the three cities and that their continued prosperity is largely dependent upon a responsible and regular steamer service. It is insisted that severance of the relationship between petitioners and the steamship company would be a commercial misfortune and detrimental to the public interest.

The attitude of both petitioners and the steamship company toward the Port Tampa route may properly be made the ground of criticism. While it is doubtless true that the route over the East Coast via Key West is the more natural and desirable one for through passenger traffic and freight of a perishable character, there is much dead freight not requiring expedition which could move as well via Port Tampa as via Key West. The distance between Jacksonville and Havana over the Coast Line via Port Tampa is 609 miles, while the distance over the East Coast via Key West between the same points is 627 miles. The former route comprises a rail haul of 249 miles and a water haul of 360 miles; the latter route a rail haul of 522 miles and a water haul of 105 miles. For this reason under normal conditions the cost of operation, and therefore the rates via the Port Tampa route, should be lower than, or at least as low as, the rates via the Key West route, yet the rates via the Port Tampa route are in many instances higher than the rates via the Key West route. On traffic between southeastern territory and Havana through rates are in effect via Port Tampa not in excess of the through rates between the same points via Key West. But from central freight association territory and points west thereof the steamship company is a party to through rates only via Key West; the rates from these territories via Port Tampa appear to be combinations of the rail rates to Jacksonville and the rail-and-water rates beyond. Considering the inherent disabilities of the route via Port Tampa a rate adjustment which favors unduly the route via Key West appears unjustifiable. In view of this rate structure and in the absence of any effort to stimulate the movement of through traffic via Port Tampa, petitioners' allegation that the traffic which might be developed by that route would be insufficient to justify the cost of increased facilities is not convincing. With active solicitation in the interest of the Port Tampa route and a competitive rate adjustment it should enjoy a larger proportion of the growing traffic moving to and from Cuba.

In addition to the Coast Line the Seaboard Air Line Railway also reaches Tampa. While the Seaboard appears as a concurring carrier in tariffs carrying joint rates to Port Tampa on freight destined to Cuba in connection with the Coast Line to Port Tampa and the steamship company beyond, little or no traffic moves by this route. It is testified that the Seaboard is also a party to the interchange arrangement with the East Coast at Jacksonville described above, and for that reason has the same incentive to surrender its southbound freight at Jacksonville to the East Coast as has the Coast Line. The record discloses, however, that the divisions accru-

ing to the Seaboard on traffic moving over this route are not calculated to induce the movement of through freight via Port Tampa. The Seaboard's haul from Jacksonville to Tampa is 211 miles, and the division of the through rate which it receives ranges from 18 to 32 per cent; the Coast Line's haul from Tampa to Port Tampa is about 9 miles, and the water haul of the steamship company to Cuba about 360 miles, for which services these companies jointly receive from 68 to 82 per cent of the through rate. Petitioners deny that the lack of movement over the Seaboard via Port Tampa is caused by the unattractive divisions accorded the latter railway. They allege that no complaints have been received from the Seaboard with respect to the present basis of division, and that they are willing to entertain any reasonable propositions tending to a more equitable adjustment if the present divisions are found objectionable. The fact remains, so far as the record discloses, that the steamship company has not sought to cultivate exchange of traffic with the Seaboard over this potential route, and has been content to remain a party to a basis of divisions the effect of which limits it to working arrangements with one carrier, the Coast Line. Such an attitude on the part of the steamship company is not conducive to the best interests of either the public or itself.

Notwithstanding the criticism which we have directed at certain phases of the steamship company's operations, upon a consideration of all the facts of record we are of opinion, and find, that the present operation of the steamship company, as a whole, is in the interest of the public and of advantage to the convenience and commerce of the people. No order, however, will be entered at this time. The case will be held open for a period of 60 days, during which time petitioners will be expected to revise their rates and the divisions thereof in harmony with the views expressed in this report. At the expiration of that time we shall consider whether or not the continued operation of the steamship company by petitioners will exclude, prevent, or reduce competition on the route by water and what final action should be taken.

All the rates, fares, schedules, and regulations applicable to the movement by the Peninsular & Occidental Steamship Company of traffic subject to the act must be filed with the Commission and posted as required by the act to regulate commerce and the rules and regulations of the Commission on or before March 1, 1916.

The requirement of section 6 that 30 days' public notice of change in rates be given may work a disadvantage to the steamship company in instances where it is forced to meet the port to port competition of water carriers not required to file tariffs. With respect to

such traffic, petition may be filed with the Commission for continuing permission to publish, file, and make effective on less than statutory notice lower rates on specific commodities. Such permission will not, however, authorize the establishment on short notice of rates higher than those in effect when permission is granted.

No. 5917.

G. B. MARKLE COMPANY ET AL.

v.

LEHIGH VALLEY RAILROAD COMPANY.

Submitted March 6, 1915. Decided December 27, 1915.

Upon complaint that rates applying upon anthracite coal in carloads from certain collieries in the Lehigh coal region of Pennsylvania to Perth Amboy f. o. b. vessels for transshipment are unreasonable and unjustly discriminatory; *Held*:

1. Reasonable rates for the future will be secured complainants by the order entered in *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220.
2. Following *Plymouth Coal Co. v. L. V. R. R. Co.*, 36 I. C. C., 140, defendant found to have justified its refusal to continue to furnish storage bins at Perth Amboy, N. J., for the free storage of anthracite coal, and defendant's demurrage regulations governing anthracite coal awaiting transshipment at Perth Amboy found reasonable.
3. Question of reparation held in abeyance for determination in a supplemental report.

R. D. Jenks and *W. A. Glasgow, jr.*, for complainants.

E. H. Boles and *S. C. Pratt* for defendant.

REPORT OF THE COMMISSION.

HALL, *Commissioner*:

G. B. Markle Company, Pardee Brothers & Company, Incorporated, and Weston Dodson & Company, Incorporated, the complainants, are corporations engaged in mining and selling coal. The interveners are partners composing the firm of Charles M. Dodson & Company and doing a like business.

By complaint, filed July 2, 1913, it is alleged that defendant's rates for transportation of anthracite coal in carloads from complainant's collieries to tidewater at Perth Amboy, N. J., for transshipment by water, are unreasonable and subject complainants to

undue prejudice and disadvantage as compared with defendant's rates on like traffic from the Wyoming coal region of Pennsylvania; and that defendant's regulations as to storage and demurrage at Perth Amboy are unjust, unreasonable, and unjustly discriminatory. Reparation is also asked. The petition in intervention, filed March 20, 1914, is to like effect except that reparation is there asked upon shipments made subsequent to the date of the filing of the original complaint.

At the hearing the parties agreed that the evidence taken in Docket 5905, *Plymouth Coal Co. v. L. V. R. R. Co.*, since reported in 36 I. C. C., 140, should be considered in connection with that introduced in this proceeding in so far as relating to the storage and demurrage regulations of defendant effective at Perth Amboy. In that case we found that defendant had justified its refusal to continue to furnish storage bins at Perth Amboy for free storage of anthracite coal, and that defendant's demurrage regulations as to anthracite coal awaiting transshipment at that point were reasonable. Those findings are controlling here upon this record.

The collieries, seven in all, from which the complainants ship their coal are located on the Mahanoy and Hazleton division of the Lehigh Valley Railroad, in the vicinity of Hazleton. These collieries are at an average distance of 131 miles from Perth Amboy. The colliery from which the interveners ship their coal is one of the seven above referred to and is 130 miles from Perth Amboy. The carload rates in issue from said collieries to Perth Amboy for transshipment by water are as follows:

	Per gross ton.
Prepared sizes.....	\$1. 55
Pea.....	1. 40
Buckwheat.....	1. 20
Rice.....	1. 10
Barley.....	1. 10
Culm.....	1. 10

All rates in this report are stated in dollars and cents per gross ton of 2,240 pounds.

In *Mecker & Co. v. L. V. R. R. Co.*, 21 I. C. C., 129, decided June 8, 1911, the Commission found the rates of the Lehigh Valley Railroad from the Stevens colliery, near Wilkes-Barre, in the Wyoming region, to tidewater at Perth Amboy, a distance of 165 miles, to be unreasonable and prescribed the following as reasonable maximum rates for the future:

	Per gross ton.
Prepared sizes.....	\$1. 40
Pea.....	1. 30
Buckwheat.....	1. 15

As compared with these rates, the higher rates from the collieries and mines of complainants and interveners are claimed to be unduly prejudicial to them.

Much evidence was introduced bearing on the issues of unreasonableness and unjust discrimination. It need not be discussed, as, since this case was submitted, just and reasonable rates governing such traffic from the coal region affected have been prescribed in *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220.

There remains the claim for reparation. We are of opinion that in passing upon this issue consideration should be had of matters such as were put in evidence in the *Anthracite case, supra*. Moreover, the parties agreed at the hearing that evidence bearing on the amount of reparation, if any, should be deferred pending determination of the issue of reasonableness.

Further hearing will be had accordingly, and meantime no order will be entered.

87 I. C. C.

No. 7437.
NEW ORLEANS JOINT TRAFFIC BUREAU
v.
ABILENE & SOUTHERN RAILWAY COMPANY ET AL

Submitted May 6, 1915. Decided December 20, 1915.

1. Difference of 13 cents per 100 pounds between the import rate on burlap in carloads and the domestic rate on burlap bags in carloads from New Orleans, La., to Dallas, Tex., found unduly prejudicial to shippers of the latter commodity and a maximum difference of 5 cents prescribed.
2. Record insufficient to justify a finding as to the reasonableness of the present rates on burlap bags in carloads and in less than carloads from New Orleans to Dallas.

J. A. Smith for complainants.

E. H. Hart and *J. D. Youman* for New Orleans & Northeastern Railroad Company; Alabama & Vicksburg Railway Company; and Vicksburg, Shreveport & Pacific Railway Company.

J. R. Christian and *J. H. Tallichet* for Southern Pacific lines.

J. F. Garcin for Missouri, Kansas & Texas Railway Company of Texas.

Frank Koch for Texas & Pacific Railway Company and International & Great Northern Railway Company and its receivers.

W. A. Wimbish for Fulton Bag & Cotton Mills, intervener.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The complaint in this case, filed October 28, 1914, was brought in behalf of Mente & Company, manufacturers of burlap bags, located at New Orleans, La. It is alleged that the reduction in 1912 of the import rate on burlap in carloads from New Orleans to Dallas, Tex., from 48½ to 38 cents resulted in undue prejudice to the complainants and undue preference of a manufacturer of burlap bags at Dallas. It is further alleged that the less-than-carload rate of 87 cents on burlap bags from New Orleans to Dallas and other Texas common points is unreasonable in itself, and that the carload rate of 51 cents on the same commodity between the same points is unreasonable as compared with the import rate to Dallas on burlap of 38 cents. Reparation is asked. The Fulton Bag & Cotton Mills, which operates plants for the manufacture of burlap and other varieties of bags

at New Orleans, Dallas, and Atlanta, Ga., intervened in defense of the present adjustment. The rates stated herein are in cents per 100 pounds.

All of the burlap used in this country is imported, largely from India and through the ports of Boston, New York, and New Orleans. It either moves inland on import rates or is manufactured at the ports into bags and then shipped at domestic rates. In either case the movement is in compressed bales.

The rates on bags complained of are applicable from New Orleans to Texas common points, including Dallas, and are made with relation to the rates from St. Louis, Mo. Under the western classification burlap and burlap bags are rated fifth and fourth class, respectively, in carloads and third class in less than carloads, but under southwestern lines exceptions carloads of bags take fifth-class rates. The difference between St. Louis and New Orleans in rates to Texas common points is 9 cents on fourth and 6 cents on fifth class, but under the present adjustment on burlap bags New Orleans is given the fourth-class differential under St. Louis, from which point the rates are 60 cents, carloads, and 96 cents, less than carloads. The same rates generally apply on domestic shipments of burlap and burlap bags, but between New Orleans and Texas common points the carload rate on the former is 3 cents higher than that on the latter.

Import rates from New Orleans to Texas common points are generally the same as those applicable from Galveston, Tex., which are made by the addition of the Texas intrastate rate and the wharfage charges, in this case 47 plus 1½ cents. The 48½-cent rate was in effect from New Orleans some years prior to June 15, 1912, on which date it was reduced to 38 cents. The reduction was made upon representation by the intervener herein to the New Orleans & Northeastern Railroad Company that it was impossible to manufacture bags at Dallas under the existing rate in competition with New Orleans. The rate asked was 35 cents. The carrier named, in conjunction with its system lines, the Alabama & Vicksburg and the Vicksburg, Shreveport & Pacific, extends only as far as Shreveport, La., and it was necessary to secure the concurrence of either the Texas & Pacific or the Missouri, Kansas & Texas. The latter declined to accept the rate of 35 cents, but agreed to the rate of 38 cents, which was published also by the direct lines, the Texas & Pacific and the Southern Pacific. To all other Texas common points the 48½-cent rate is still in effect. The Texas & Pacific is the only line which published the reduced rate subject to rule 77 of Tariff Circular No. 18-A. The short-line distance from New Orleans to Dallas, via the Texas & Pacific, is 515 miles; the distance via the New Orleans & Northeastern and the Missouri, Kansas & Texas of Texas is 726 miles.

By use of the carload import rate on burlap to Dallas and the less-than-carload rates on bags, under the Texas scale for one-line hauls, the manufacturer at Dallas is able to ship bags in less-than-carload lots to points within a radius of 156 miles from Dallas at a total charge varying from 1 to 35 cents per 100 pounds lower than the less-than-carload rate from New Orleans direct. On carload shipments of bags the territory in which the Dallas manufacturer has an advantage is much smaller, extending only 33 miles from Dallas.

The rates requested on bags from New Orleans to Dallas are 40½ cents, in carloads, and 68 cents in less than carloads. The former is higher than the import burlap rate by 2½ cents, the amount of the difference in rates prior to June 15, 1912. The latter is an average rate which, it is estimated, would permit the New Orleans manufacturer to deliver bags at points within the 156-mile radius on a parity with Dallas. However, while specific rates are requested, it appears that complainants are mainly interested in the relation of rates and their testimony was directed more to showing unreasonableness in the difference in rates between burlap and bags than unreasonableness in the present rates on bags.

The carload minimum applicable to shipments of either burlap or burlap bags is 30,000 pounds. The average loading of burlap is about 45,000 pounds and of bags about 35,000 pounds. The testimony as to the respective values of the two commodities is somewhat conflicting, but it is clear that the difference is comparatively small. Burlap is worth from 8 to 8½ cents per pound. At 8½ cents per pound a minimum carload of burlap is worth \$2,550. A witness for Mente & Company testified that the labor cost in manufacturing 1,000 bags is about \$1, and that there is a waste of about 1 per cent in material. Another witness testified that the difference between the cost of the burlap and the average selling price of burlap bags is about \$6 per thousand bags. As it takes about 33,000 ordinary burlap bags to make a carload of 30,000 pounds, it can be seen that the difference in value, whether based upon actual cost or upon selling price, is not great.

In their defense the carriers are divided into two groups. The testimony on behalf of the indirect lines was that the 38-cent rate on burlap was fixed not with relation to the domestic rate on bags from New Orleans, but arbitrarily to enable the Dallas manufacturer to compete with bags manufactured at New Orleans. In their brief it is stated that—

The pivotal reason for the reduction from 48½ cents to 38 cents was the competition of the New Orleans and the Dallas manufacturers for the Texas business, the complaint of the Dallas manufacturer being that the old rate of 48½ cents was prohibitive.

The 38-cent rate, it is claimed by these carriers, is fairly in line with import rates on burlap from New Orleans and other ports to other destinations than those in Texas. It is also stated that a reduction in the rate on bags from New Orleans would be followed by a corresponding reduction from St. Louis and related points.

The direct lines, on the other hand, maintain that the 38-cent rate is unreasonably low, and their position as to the relationship between import and domestic rates is expressed in the following language in their brief:

Our position in a nutshell is this: That the import rates should be made with respect to the stress of port competition; that so long as they are no lower than necessary to remove the disability of one port as compared with another no discrimination results against domestic traffic, but that in no case should the import rate from the most favored port be lower than the domestic rate from that port—that is to say, unless a given port is actually under a disability as compared with other ports it is a discrimination to maintain a lower rate upon import traffic than applies upon domestic traffic, and to the extent that a port is under disability it is a discrimination to maintain an import rate lower than necessary to remove that disability.

The direct lines contend further that the present domestic rates on bags, carload and less than carload, are reasonable and that the discrimination against New Orleans, which they admit to be unjust, should be removed by an increase in the import rate on burlap.

The testimony shows, and in fact it was admitted by the defendants, that the element of port competition is lacking, as very little burlap moves through Galveston and competition of Atlantic coast ports is not felt in Texas. The 38-cent rate has not been established from Galveston, but the defendants responsible for that rate from New Orleans state that this was due to inadvertence.

The intervener contends that it will be impossible to manufacture burlap bags at Dallas in competition with New Orleans if the import rate on burlap is materially advanced or the difference between the bag and import burlap rates narrowed to the extent requested by the complainants and the direct lines. The complainants contend that a continuance of the existing difference will result in transferring the manufacture of bags from the coast to interior points; and that as it is not contended by the indirect lines that the 38-cent rate on burlap is not reasonably remunerative the carload rate on bags should be made 2½ cents higher, thereby reestablishing the old relationship.

The complainants, as above stated, appear to be mainly interested in the amount of the difference in rates on the two commodities involved, and have not presented such evidence as would justify us in passing upon the reasonableness *per se* of the rates on burlap bags. Our finding, therefore, will be only upon the question of unjust discrimination. We have found that prior to June 15, 1912, the import rate on burlap to Texas common points was made the same from New

Orleans as from Galveston; and this apparently was done more because it was the general basis of import rates from New Orleans than because of any active competition with the port of Galveston on this particular commodity. Further, it has not been claimed that the import burlap rate was reduced below the basis stated to meet competition with the same commodity, or with bags manufactured therefrom, from any port other than New Orleans or with any commodity manufactured in this country from materials other than imported burlap, so there is no question as to the free movement of import traffic in competition with domestic products. Therefore the elements justifying a greater difference between the import on burlap and the domestic rate on burlap bags than 2½ cents, if any, necessarily must be in the conditions of transportation of those commodities. We have found that the former is of somewhat less value and moves in substantially heavier loads than the latter, but, on the other hand, it is shown that import traffic is subject to terminal expense not necessary on domestic shipments. Upon consideration of the facts of record we are of opinion, and find, that the maintenance of a rate on burlap bags in carloads from New Orleans to Dallas, which exceeds by more than 5 cents per 100 pounds the import rate on burlap in carloads between the same points, is unduly prejudicial to shippers of the former and unduly preferential of shippers of the latter commodity, in violation of section 3 of the amended act.

As hereinbefore stated, the import rate of 38 cents from New Orleans to Dallas was published subject to rule 77 of Tariff Circular No. 18-A by only the Texas & Pacific. The Commission has given general authority for a circuitous route to meet, under certain circumstances, a rate established or reduced by a short route without maintaining it as maximum at intermediate points. This, however, is not a case coming within that permission, as the carriers composing the circuitous route established and defend as reasonable the 38-cent rate to Dallas, and, therefore, whatever import rate is published to that point on burlap must be maintained as maximum to intermediate points, or must be published subject to rule 77.

The Commission is of opinion that there is not such a showing of damage as justifies an award of reparation.

An order will be entered in accordance with the above findings.

87 I. C. C.

No. 7433.
KOSMOS PORTLAND CEMENT COMPANY
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted May 12, 1915. Decided December 20, 1915.

The present adjustment of rates on cement to points in Illinois, Indiana, and Ohio found to subject Kosmosdale, Ky., to undue prejudice and disadvantage and to unduly prefer Sellersburg, Ind., and other points.

***J. V. Norman* for complainant.**

***R. Walton Moore* and *C. D. Drayton* for Illinois Central Railroad Company and other southeastern carriers.**

***W. C. Crawford* for Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.**

***O. S. Lewis* for Baltimore & Ohio Railroad Company and other carriers.**

***Walter Nichols* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.**

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The complainant, a corporation engaged in the manufacture of portland cement at Kosmosdale, Ky., challenges the reasonableness of the present adjustment of rates on that commodity to points in Illinois, Indiana, and Ohio, alleging that it subjects Kosmosdale to undue prejudice and disadvantage and unduly prefers Sellersburg and Mitchell, Ind., and Hannibal, Mo., competing points of production, and that the rates from Kosmosdale are unreasonable *per se*. The testimony offered by the complainant, however, was directed only to the question of discrimination.

Kosmosdale is situated on the south bank of the Ohio River and is a local point on the Illinois Central Railroad, 18 miles southwest of Louisville, Ky. Sellersburg is a local point on the Pittsburgh, Cincinnati, Chicago & St. Louis Railway, 12 miles north of Louisville; and Mitchell is the junction of the Baltimore & Ohio Southwestern and Chicago, Indianapolis & Louisville railways, 68 miles northwest of Louisville via the latter. Hannibal is on the west bank of the Mississippi River and 120 miles north of St. Louis, Mo. The testimony referred principally to the rates and conditions of trans-

portation from Kosmosdale and from Sellersburg, and to competition between those points.

Following the decisions of the Commission in *The Five Per Cent Case*, 31 I. C. C., 351; 32 I. C. C., 325, there was a general increase in cement rates in central freight association territory. Prior to this increase cement rates in this territory, except where competition of lines and markets forced a lower basis, were $73\frac{1}{2}$ per cent of the sixth-class rates. From Sellersburg to central freight association points the rates are generally the same as from Jeffersonville and New Albany, Ind., points just opposite to Louisville, whereas from Kosmosdale there is added to the Jeffersonville-New Albany rate 3 cents for the transportation to Louisville and a 1-cent bridge charge; consequently to the major part of central freight association territory Kosmosdale is under a rate disadvantage of 4 cents per 100 pounds as compared with Sellersburg. The principal exception to this is southern Illinois, to points in which the rate difference between Kosmosdale and Sellersburg, as will be hereinafter explained, varies from a fraction of a cent to 4 cents per 100 pounds.

In *Cape Girardeau Portland Cement Co. v. St. L. & S. F. R. R. Co.*, 35 I. C. C., 109, the adjustment of cement rates to southern Illinois from St. Louis, Hannibal, Mitchell, and La Salle, Ill., was discussed and was found to depend upon three rates: $7\frac{1}{2}$ cents from Mitchell to Cairo, Ill.; $6\frac{1}{2}$ cents from St. Louis to Cairo; and $6\frac{1}{2}$ cents from Mitchell to East St. Louis and St. Louis, recently increased to the latter to 6.8 cents. The carriers operating in this territory generally observe the requirements of the fourth section on this traffic, and the rates named are carried as maxima and blanketed for substantial distances over both direct and indirect routes. From Sellersburg the rate to Cairo is 8.4 cents, and the rate to East St. Louis and St. Louis has been increased from $7\frac{1}{2}$ to 7.9 cents; and these rates, like those above named, are carried as maxima to intermediate points.

The Illinois Central serves a large portion of Illinois, and its several lines in that state connect with its lines south of the Ohio River from Louisville and from the south. Its rates from Louisville and Kosmosdale are 6 cents to Paducah, Ky.; $6\frac{1}{2}$ cents to Evansville, Ind.; and 8 cents to Cairo. To St. Louis and to all points on its lines in Illinois south of the line of the Baltimore & Ohio Southwestern from Mitchell to East St. Louis it carries a rate of 9 cents. To its points in a large section of the state north of the line described the Chicago rate, $10\frac{1}{2}$ cents, is applicable. Through rates are published from Kosmosdale to Southern Railway stations between New Albany and East St. Louis graded from $7\frac{1}{2}$ to 9 cents per 100 pounds.

The defendants seek to justify the present adjustment on the ground that cement moves on very low rates in central freight association territory and that the Illinois Central receives but 3 cents per 100 pounds for its 18-mile haul to Louisville, which, it is contended, is as little as that carrier could be expected to handle the traffic for. The local rate from Kosmosdale to Louisville, it should be stated, is 3½ cents. The defendants further point to the fact that rates generally from points south of the Ohio River to central freight association territory are made full combination on the river and contend that there are no circumstances justifying the requirement that either the line to or north of the river accept less than its present earnings on cement traffic from Kosmosdale.

The complainant asks for rates from Kosmosdale which exceed the rates from Sellersburg in no case by more than 2 cents and to points to which the short route from Sellersburg is through Jeffersonville or New Albany by not more than 1 cent. The complainant further points to the relative adjustment from the two points to Mississippi Valley and southeastern territories and contends that Kosmosdale should have a no less favorable adjustment to the north than Sellersburg has to the south.

To Mississippi River points and to the larger Mississippi and Tennessee points, except local points on the Illinois Central, both Kosmosdale and Sellersburg are on the Louisville basis on cement. To the local Illinois Central points referred to Sellersburg is 2 cents higher than Kosmosdale. The rates from Sellersburg to the southeast generally were, prior to the recent general increase in central freight association territory, 2 cents and are now 2.2 cents higher than the rates from Kosmosdale. The amounts named are proportionals to New Albany, from which the Louisville rate applies, and are 0.2 of a cent lower than the local rates. From Mitchell the local rate to New Albany is 5 cents and the Baltimore & Ohio Southwestern desires to increase it to 5.3 cents, but on traffic to the southeast the proportional rate is 3.5 cents.

From a survey of the rate situation it appears that rates on cement from St. Louis, Hannibal, Mitchell, Sellersburg, and other producing points to points in Illinois, Indiana, and Ohio are made to a considerable extent with reference to competition between such points, but from Kosmosdale to the same territory an arbitrary of 4 cents is added to the Jeffersonville-New Albany rate without regard to the competition the Kosmosdale manufacturer has to meet; this upon the theory that Kosmosdale is not in central freight association territory and is not entitled to the advantage of the rate adjustment therein. While the Ohio River crossings are natural rate-breaking points and the amount of through charges between points in the southeast and

points north of the river is generally fixed by the lowest combination on the river, a general rate adjustment, however fair for the major portion of the traffic moving thereunder, does not justify an unreasonable difference in rates between a producing point on the south bank and one a few miles north of the river. The rates from Kosmosdale to central freight association points, however, may reasonably be somewhat higher than those from Sellersburg because of the greater distance and the cost of handling cars across the Ohio River.

Upon consideration of the facts of record we are of opinion, and find, that the present adjustment of rates on cement from Kosmosdale to points in Illinois, Indiana, and Ohio is unreasonable, and subjects Kosmosdale to undue prejudice and disadvantage to the extent that the rates from Kosmosdale exceed those contemporaneously maintained from New Albany by more than 2.2 cents per 100 pounds. This, however, should not be understood as authorizing any increases to points to which there is at present a less difference than 2.2 cents.

The petition in this case also alleges that the present adjustment of cement rates is in violation of the requirements of the fourth section in that rates from Sellersburg to points in southern Indiana and Illinois, applicable through Kosmosdale, are lower than rates from Kosmosdale to the same points. This route would be a somewhat circuitous one from Sellersburg, and the testimony is that no traffic moves over it. Fourth Section Application No. 2060 was set for hearing with the complaint in this case, but no testimony in support thereof was introduced, and it is not necessary for the purposes of this case to express any opinion thereon.

An order will be entered in accordance with the findings herein.

37 I. C. C.

THE BOAT "H. B. PLANT."

No. 6914.

APPLICATION OF THE ATLANTIC COAST LINE RAILROAD COMPANY UNDER SECTION 5 OF THE ACT TO REGULATE COMMERCE, AS AMENDED BY SECTION 11 OF THE PANAMA CANAL ACT, IN CONNECTION WITH THE OWNERSHIP OF THE BOAT "H. B. PLANT."

Submitted May 18, 1915. Decided December 23, 1915.

Upon application of the Atlantic Coast Line Railroad Company, under the provisions of section 5 of the act to regulate commerce, as amended by the Panama Canal act, for an extension of time beyond July 1, 1914, during which to continue the operation of the boat *H. B. Plant* through the St. Petersburg Transportation Company; *Held:*

1. Petitioner may or does compete with the boat *H. B. Plant* operated by St. Petersburg Transportation Company.
2. The operation of the boat *H. B. Plant* as at present conducted by the St. Petersburg Transportation Company is in the interest of the public and of advantage to the convenience and commerce of the people, and, as the Commission is at present advised, its continued operation will neither exclude, prevent, nor reduce competition on the route by water, and the application should be granted.
3. All the rates, schedules, and regulations applicable to the movement by the *H. B. Plant* of traffic subject to the act must be filed with the Commission and posted to the public as required by the act to regulate commerce and the rules and regulations of the Commission.

Alexander Hamilton and R. Walton Moore for Atlantic Coast Line Railroad Company.

REPORT OF THE COMMISSION.

MEYER, *Commissioner:*

The Atlantic Coast Line Railroad Company, by separate application filed February 16, 1914, petitions the Commission under section 5 of the act to regulate commerce, as amended by section 11 of the Panama Canal act, that it be permitted to operate beyond July 1, 1914, through the St. Petersburg Transportation Company the boat *H. B. Plant*.

The Atlantic Coast Line Railroad Company, hereinafter referred to as the Coast Line, owns and operates 4,412 miles of railroad, a portion of which is located in the state of Florida, and, among other

points, extends to Tampa and St. Petersburg. The latter point is across Tampa Bay from Tampa, a distance of about 20 miles.

The St. Petersburg Transportation Company, hereinafter referred to as the transportation company, is a corporation owned and controlled by business men of Tampa. It operates three boats, one of them, the *H. B. Plant*, engaged in freight and passenger transportation, between Tampa, St. Petersburg, Terre Ceia Bay, and Manatee River landings. One boat makes three trips a day between Tampa and St. Petersburg, while the remaining boats make two trips a day between Tampa and Manatee River landings via St. Petersburg. The points in the Manatee River Valley involved are about 40 miles south of Tampa.

The boat *H. B. Plant* is owned by the Atlantic Land & Improvement Company, a corporation, the entire capital stock of which is owned by the Coast Line. This boat was acquired from the Plant system in 1902, at which time the Coast Line purchased the railroad and other properties of the Plant system. It is not owned by the St. Petersburg Transportation Company, but is operated by the latter company under an agreement that the Coast Line shall receive one-third of the earnings of the transportation company or pay one-third of its losses, as the case might be, in return for the use of this boat; each boat of the line assumes the burden of its own upkeep and repairs. The record discloses that during the past four years the Coast Line has received about \$7,000 as its one-third share of the earnings of the transportation company. The Coast Line and transportation company publish joint rates and passenger fares between Jacksonville and Manatee River landings served by the latter company. The principal freight carried is fruit grown in the Manatee River Valley; there is also a considerable local movement of freight and passengers between Tampa and St. Petersburg.

The issues presented for determination are: May or does petitioner compete for traffic with the boat *H. B. Plant* as operated by the transportation company, and if so, is the existing service by water in the interest of the public and of advantage to the convenience and commerce of the people, and will a continuance thereof exclude, prevent, or reduce competition on the route by water?

The rails of the Coast Line reach both Tampa and St. Petersburg. Traffic from Jacksonville, Fla., and points north thereof to St. Petersburg may move over the Coast Line to Tampa, thence via the transportation company, or all rail direct. Traffic between Tampa and St. Petersburg may move directly by water via the transportation company or via a circuitous all-rail route formed by the rails of the Coast Line. The distance over the water route is 20 miles; via the all-rail route, 142 miles. The rails of the Coast

Line do not reach the points on the Manatee River served by the transportation company.

Petitioner urges that there is and can be no competition between the Coast Line and the *H. B. Plant* operated by the transportation company within the meaning of the act; that traffic between Tampa and St. Petersburg moves via the transportation company because it is the shorter route; that the circuitry of the all-rail route is so great as to prevent its being considered a competitive route. This suggests the question: If this boat now operated by the transportation company were independently operated, would the Coast Line surrender all traffic between Tampa and St. Petersburg to the former company, or would it seek to retain as much traffic as possible for its all-rail haul? While passengers and certain kinds of freight might continue to move over the shorter water route, it is barely possible that some freight would remain which could move as well by one route as by the other, and the Coast Line would endeavor to obtain such traffic. Petitioner urges, moreover, that there is no competition between the Coast Line and the transportation company with respect to traffic to and from Manatee River landings. This assertion is apparently correct, but the service to these points is only part of the through service from Tampa via St. Petersburg.

We find, therefore, that the petitioner may or does compete with the boat *H. B. Plant*, as at present operated, within the meaning of the act.

The record discloses that the Seaboard Air Line Railway reaches Tampa and extends into the Manatee River Valley. Prior to 1909 a boat line was operated between Tampa and points on the Manatee River which interchanged traffic with the Seaboard. This line was subsequently merged with the transportation company upon its organization in 1909. Under an agreement executed in 1910 and still in force between the Coast Line and the transportation company, each agrees to make the other its preferred connection in consideration of the Coast Line permitting the use of the boat *H. B. Plant* in the service of the transportation company. Petitioner alleges that this agreement was entered into for the purpose of effecting an extension of the rails of the Coast Line from Tampa into the Manatee River Valley in competition with the rails of the Seaboard. However worthy the object of the agreement, its terms limit the transportation company to working arrangements with the Coast Line and, in the absence of any other regular steamship line from Tampa to the Manatee country, restrict the Seaboard to its all-rail route. While there is no evidence of record indicating that the Seaboard at the present time desires joint rates with the transportation company, we must condemn any agreement between the Coast Line and the transportation company which prevents the latter company

entering into joint rates with the Seaboard or any other rail line reaching points served by the transportation company, either as a result of its own initiative or upon request by the rail lines desiring joint rates.

In addition to the transportation company two other boat lines operate between Tampa and St. Petersburg. The Tampa & Gulf Coast Railroad also extends between these points and interchanges traffic at Tampa with the Seaboard. The distance via the Tampa & Gulf Coast is 53 miles, as compared with 20 miles via the transportation company and 142 miles via the Coast Line.

Upon all the facts of record we find that the operation of the boat *H. B. Plant* as at present conducted by the transportation company is in the interest of the public and of advantage to the convenience and commerce of the people, and that its continued operation will neither exclude, prevent, nor reduce competition on the route by water involved. An order will be entered granting petitioner's application that it be permitted to operate the boat *H. B. Plant* beyond July 1, 1914, subject to such further order or orders as may hereafter be entered by the Commission.

All the rates, fares, schedules, and regulations applicable to the movement by the *H. B. Plant* of traffic subject to the act must be filed with the Commission and posted as required by the act to regulate commerce and the rules and regulations of the Commission, on or before March 1, 1916.

An appropriate order will be entered.

37 I. C. C.

No. 4792.
PLYMOUTH COAL COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY ET AL.

No. 4792 (Sub-No. 1).
PLYMOUTH COAL COMPANY
v.
DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY.

Submitted April 3, 1914. Decided December 27, 1915.

Upon complaint that rates applying upon anthracite coal in carloads from Plymouth and Luzerne, Pa., to South Amboy and Hoboken, N. J., f. o. b. vessels for transshipment are unreasonable; *Held:*

1. Reasonable rates for the future will be secured complainants by the order entered in *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220.
2. Question of reparation held in abeyance for determination in a supplemental report.

R. D. Jenks and *W. A. Glasgow, jr.*, for complainant.

J. L. Seager for Delaware, Lackawanna & Western Railroad Company.

G. S. Patterson for Pennsylvania Railroad Company and Northern Central Railway Company.

REPORT OF THE COMMISSION.

HAILE, *Commissioner*:

Complainant is a corporation engaged in mining and selling anthracite coal, with mines at Plymouth and Luzerne, in the Wyoming coal region of Pennsylvania, known respectively as the Dodson colliery and the Black Diamond colliery. By two complaints, filed April 8, 1912, it attacks as unjust and unreasonable the rates charged for the transportation in carloads of anthracite coal from those collieries to tidewater, and claims reparation. That in Docket 4792 is against the Delaware, Lackawanna & Western Railroad Company, hereinafter termed the Lackawanna, the Pennsylvania Railroad Company, and the Northern Central Railway Company, and is based on the joint rates charged by those carriers for such transportation to South Amboy, N. J., f. o. b. vessels for transshipment; while the complaint

in Docket No. 4792 (Sub-No. 1) is against the Lackawanna alone and has to do with its rates for such transportation to New York lightering station, Hoboken, N. J., f. o. b. vessels.

All rates in this report are stated in dollars and cents per gross ton of 2,240 pounds.

The rates in question, and the distances over the different routes, are as follows:

From -	To—	Route.	Dis- tance.	Pre- pared sizes.	Pea.	Buck- wheat.	Small- er than pea.
Plymouth, Pa. (Dol- son colliery).	Hoboken, N. J.	Lackawanna (via cut-off).	Miles. 153.4	\$1.58	\$1.43	\$1.28	.....
Luzerne, Pa. (Black Diamond colliery).	do.	do.	149.1	1.58	1.43	1.28	.....
Plymouth, Pa. (Dol- son colliery).	South Amboy, N. J.	Lackawanna, Penn- sylvania, Northern Central.	280	1.55	1.40	.....	\$1.25
Luzerne, Pa. (Black Diamond colliery).	do.	do.	284	1.55	1.40	.....	1.25

Both collieries are on the Bloomsburg branch of the Lackawanna. Plymouth is 4 miles south of Luzerne and Luzerne 13 miles south of Taylor, Pa., which is also in the Wyoming coal region.

In *Marian Coal Co. v. D., L. & W. R. R. Co.*, 24 I. C. C., 140, decided June 8, 1912, the Commission prescribed as reasonable the following maximum rates from Taylor to Hoboken via the Lackawanna:

	Per gross ton.
On prepared sizes	\$1.33
On pea	1.24
On buckwheat	1.09

The distance over the Lackawanna via its cut-off from Taylor to Hoboken is 136.2 miles.

In *Meeker & Co. v. L. V. R. R. Co.*, 21 I. C. C., 129, decided June 8, 1911, the Commission found the rates of the Lehigh Valley Railroad from the Wyoming region to tidewater at Perth Amboy, N. J., to be unreasonable and prescribed as reasonable maximum rates for the future the following:

	Per gross ton.
On prepared sizes	\$1.40
On pea	1.30
On buckwheat	1.15

The distance from Luzerne to Perth Amboy via the Lehigh Valley Railroad is 165 miles.

Coal transported from complainant's collieries to tidewater at Hoboken over the Lackawanna moves on the Lackawanna's Bloomsburg branch to Taylor and thence over the same tracks and under exactly the same operating conditions as does coal originating at

Taylor. If to tidewater at South Amboy, the coal is removed from complainant's collieries by Lackawanna locomotives and delivered to the Pennsylvania Railroad at Nanticoke, about 6 miles south of the collieries. From this point it moves over the Pennsylvania system via Sunbury, Harrisburg, and Morrisville, Pa., to South Amboy, a total distance of approximately 285 miles.

Complainant contends that the *Meeker* and *Marian cases, supra*, conclusively demonstrate the unreasonableness of the rates here attacked. The circumstances surrounding the transportation of coal from complainant's collieries and from the collieries considered in the *Meeker* and *Marian cases* are substantially similar.

Since the submission of the present case the Commission has concluded an exhaustive investigation into the reasonableness of the rates, practices, rules, and regulations governing the transportation of anthracite coal from the coal regions of Pennsylvania to various points in official classification territory. *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220. By the order entered in that case reasonable maximum rates were prescribed for the transportation of anthracite coal from points in the Wyoming region on the lines of the defendants herein to the various tidewater ports for reshipment by water. Nothing has been shown in the present case to call for any modification of that order which assures to complainant reasonable rates for the future.

There remains the complainant's claim for reparation. We are of opinion that in passing upon this issue consideration should be had of matters such as were put in evidence in the *Anthracite case, supra*. Moreover, the parties agreed at the hearing that evidence bearing on the amount of reparation, if any, should be deferred pending determination of the issue of reasonableness.

Further hearing will be had accordingly, and meantime no order will be entered.

37 I. C. C.

No. 6189.
RED ASH COAL COMPANY
v.
CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Submitted March 6, 1915. Decided January 3, 1916.

Upon complaint that rates applying upon anthracite coal in carloads from Ashley, Pa., to Elizabethport and Port Johnston, N. J., f. o. b. vessels for reshipment are unreasonable; *Held:*

1. Reasonable rates for the future will be secured complainant by the order entered in *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220.
2. Following *Plymouth Coal Co. v. D., L. & W. R. R. Co.*, 36 I. C. C., 76, defendant's demurrage regulations governing anthracite coal awaiting transshipment at or near Elizabethport and Port Johnston found reasonable.
3. Question of reparation held in abeyance for determination in a supplemental report.

R. D. Jenks and *W. A. Glasgow, jr.*, for complainant.
J. E. Reynolds for defendant.

REPORT OF THE COMMISSION.

HALL, Commissioner:

Complainant, a corporation engaged in mining and selling anthracite coal, filed a complaint herein October 3, 1913, in which it alleges that rates charged by defendant for the transportation of anthracite coal from complainant's Red Ash colliery near Ashley, Pa., and from other points in the Wyoming coal region of Pennsylvania, to tide-water at Elizabethport and Port Johnston, N. J., f. o. b. vessels for reshipment are unreasonable and unjustly discriminatory, and asks reparation upon all shipments of anthracite coal made by it subsequent to December 20, 1912. The complaint also assails as unreasonable and unjustly discriminatory the demurrage regulations of defendant governing anthracite coal awaiting transshipment at Elizabethport and Port Johnston.

The rates under attack are, per gross ton of 2,240 pounds, delivered free on board vessels, as follows:

On prepared sizes	\$1. 55
Pea	1. 40
Buck No. 1	1. 20
Buck Nos. 2 and 3 or smaller sizes	1. 10

Complainant is in direct competition with other anthracite coal operators in the Wyoming region.

In *Meeker & Co. v. L. V. R. R. Co.*, 21 I. C. C., 129, the Commission fixed maximum rates for the future from this region to Perth Amboy, N. J., of \$1.40 on prepared sizes, \$1.30 on pea, and \$1.15 on buckwheat, and these became the generally applied rates from the Wyoming region to tidewater. The defendant here did not meet the rates prescribed in the *Meeker case, supra*, but has continued to exact the rates under attack.

The distance from complainant's colliery to destination at tidewater over the line of the defendant is 153 miles. The distance over the Lehigh Valley Railroad Company, for which the rates in the *Meeker case* were prescribed, is 165 miles. The lines of defendant and of the Lehigh Valley extend in the same general direction and are but a short distance apart. The average distances from the Wyoming region to tidewater are over defendant's lines 160 miles, over the Lehigh Valley 165 miles.

Complainant showed that the transportation conditions affecting the movement of anthracite coal over the lines of defendant and of the Lehigh Valley Railroad from the Wyoming region to tidewater are substantially similar. A comparison of the revenue per ton-mile received by defendant with such revenue from the rates prescribed by the Commission in the *Meeker case* shows the following:

	Earnings per ton-mile, gross tons, from—	
	Rates of defendant.	Rates in Meeker case.
	Mills.	Mills.
Prepared sizes.....	10. 13	8. 48
Pea.....	9. 15	7. 87
Buckwheat No. 1.....	7. 84	6. 96

Since the hearing in the present case, reasonable maximum rates have been prescribed for the transportation of anthracite coal in carloads from collieries in the Wyoming region on the lines of the defendant to tidewater f. o. b. vessels for reshipment. *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220. Upon consideration of the record in this case we are of the opinion that the relief which the complainant herein has shown itself entitled to will be secured by the order in the aforesaid case.

The demurrage regulations of defendant which complainant alleges are unreasonable and discriminatory were prescribed in a tariff effective November 14, 1911. The objections made by the complainant to this tariff are directed against the rule requiring that statements and bills for demurrage shall be computed at the end of each calendar month. Demurrage is computed upon a plan which permits an

average detention of five days for every car, such average being computed at the end of each calendar month, debiting the shipper for cars detained longer than five days and crediting him when cars are released within that time. The contention made here was made in the case of *Peale, Peacock & Kerr v. C. R. R. Co. of N. J.*, 18 I. C. C., 25, and the present tariff of the defendant, as appears from its title-page, was published to conform to the opinion of the Commission in that case. Some definite period at the end of which the average must be obtained and a balance struck must be prescribed. A calendar month is a natural division, and such division conforms to commercial usage and to the time statements of debits and credits are made in car accounting.

Upon this record, we conclude that the demurrage regulations in issue are reasonable. *Plymouth Coal Co. v. D., L. & W. R. R. Co.*, 36 I. C. C., 76.

There remains the question presented by the complainant's claim for reparation. We are of the opinion that in passing upon this issue consideration should be had of matters such as were put in evidence in the *Anthracite case, supra*. Moreover, the parties agreed at the hearing that evidence bearing on the amount of reparation, if any, should be deferred pending determination of the issue of reasonableness.

Further hearing will be had accordingly, and meantime no order will be entered.

87 I. C. C.

No. 7704.
CUMBERLAND TRANSPORTATION COMPANY
v.
CINCINNATI, NEW ORLEANS & TEXAS PACIFIC
RAILWAY COMPANY ET AL.

Submitted August 1, 1915. Decided December 24, 1915.

Upon the filing of a satisfactory bond by the complainant defendants will be required to establish through routes and joint rates with the complainant between landings on the Cumberland River in Kentucky and Tennessee and interstate points on defendants' lines in the same manner, on the same terms, and to the same extent as such through routes and joint rates are maintained by the defendants in connection with the complainant's competitor, the Burnside & Burkesville Transportation Company.

J. V. Norman and *B. V. Smith* for complainant.

William Waddle for Burnside & Burkesville Transportation Company, intervener.

H. L. Burch and *G. M. Freer* for Board of Commerce of Lexington, Ky., intervener.

J. J. Telford for Louisville Board of Trade, intervener.

F. M. Renshaw for Cincinnati Chamber of Commerce, intervener.

C. J. Rixey, jr., and *R. Walton Moore* for defendants.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The complaint in this case, filed January 30, 1915, alleges that because of the defendants' refusal to join with the complainant in establishing through routes and joint rates between Cumberland River landings served by the complainant and interstate points on defendants' lines, while at the same time joining in such through routes and joint rates with complainant's only competitor, the Burnside & Burkesville Transportation Company, the complainant is subjected to undue prejudice and its patrons to the payment of unjust and unreasonable rates.

The Burnside & Burkesville Transportation Company, which has intervened in opposition to the granting of the petitioner's prayer, has operated for more than 25 years on the Cumberland River between Burnside, at the head of navigation in the state of Kentucky, and Celina, in the state of Tennessee. Its present equipment consists of two large packet boats, the *Rowena* and the *Celina*, together with a tugboat and several barges. The *Rowena* is the largest steamer operating on this part of the Cumberland River, its capacity

being 300 tons. The *Celina* is a somewhat smaller boat, its capacity being about 250 tons. The company has a capital stock of \$30,000 and is in good financial condition. The defendants have published joint rates in connection with this line for more than 20 years.

The Cumberland Transportation Company is an adjunct of the Cumberland Grocery Company. It was organized in 1908 with a capital stock of \$5,000, of which \$4,100 was purchased by the Cumberland Grocery Company. The principal reason for the organization of the company was that the grocery company desired to handle its own tonnage, which had previously been handled by the Burnside line, and also, it is said, because the Burnside & Burkesville Transportation Company did not provide regular service during the low-water periods. While the Cumberland Transportation Company is to some extent a "plant facility" of the grocery company, it has from the outset operated as a common carrier.

The headquarters of the Cumberland Grocery Company are at Burnside, but it has branch houses at several points along the Cumberland River. Its principal competitors in Kentucky are at Lexington and Louisville. It has competitors also at Cincinnati. It has agents throughout the Cumberland Valley who solicit trade for both the grocery company and the transportation company. The latter company does not file tariffs, but distributes circulars quoting its rates.

Until recently the accounts of the Cumberland Grocery Company have been intermingled with those of the Cumberland Transportation Company in such a way that it is almost impossible to separate them. The principal officers of the transportation company are also the principal officers of the grocery company and their salaries are paid by the grocery company. The grocery company has loaned money to the transportation company from time to time for the purchase and repair of boats and barges and for other purposes. The indebtedness of the transportation company to the grocery company is said to have amounted recently to as much as \$28,000, though this is only an estimate, and the accounts of the two companies have been so confused that the amount of the indebtedness can not be exactly ascertained. On May 15, 1915, six days before the hearing, the capital stock of the transportation company was increased from \$5,000 to \$25,000, the new stock being taken over by the grocery company in full settlement of all claims which it had against the transportation company. It is admitted that the amount of the indebtedness exceeded the par value of the new stock by several thousand dollars, but the grocery company waived the balance. Of the transportation company's capital stock of \$25,000, the grocery company now owns \$24,100.

The Cumberland line is not so well equipped as its competitor. Its largest steamer, the *Patrol*, can carry less than half as much ton-

nage as the *Rouena*. Its value is estimated by the complainant at \$17,500. The Cumberland line also owns a smaller steamer, the *Nixon*, whose value is estimated at \$6,000. These figures represent the actual total cost of the boats and are admittedly greatly in excess of their present market value. The company also owns three small gasoline boats and several barges. It does not own a tugboat, which is necessary for the expeditious handling of forest products upstream, and therefore does not engage in that traffic to the same extent as its competitor. Accepting the above figures as representing the present market value of the boats, the total assets of the Cumberland Transportation Company are somewhat more than \$30,000. Subtracting from this the sum of \$5,000, which is still owed on the steamer *Patrol*, the company is worth somewhat more than \$25,000, at its own estimate, though this figure would be reduced considerably if based on the present market value of the property.

The Cumberland River is navigable throughout the year between Burnside and Lock No. 21, which is 29 miles below Burnside. The steamers of both companies operate all the year on this part of the river, which is known as the "pool." During the period of high water, from December to May, the steamers of both lines make two round trips a week, the steamers of the Cumberland line running from Burnside as far as Carthage, and those of the Burnside line from Burnside to Myers Landing, about 62 miles north of Carthage. When the water is low the steamers can not go below Lock No. 21, and small gasoline boats must be used for traffic coming from or destined to river landings between Lock No. 21 and Carthage. The Cumberland line is equipped with gasoline boats and barges especially adapted for this traffic, while the Burnside line has never operated boats below Lock No. 21 when the water is low.

The Cincinnati, New Orleans & Texas Pacific Railway crosses the Cumberland River at Burnside at a height of about 185 feet above the level of the river. The Cincinnati, Burnside & Cumberland River Railway, which is owned and operated by the Cincinnati, New Orleans & Texas Pacific Railway, connects with the latter road at Burnside, and runs along the bank of the river for 2 or 3 miles. All freight arriving at Burnside for delivery to either boat line is hauled to the river by the Cincinnati, Burnside & Cumberland River Railway. Less-than-carload freight, whether intended for delivery to the Burnside line or the Cumberland line, is taken to a railroad freight house near the river, from which the boat line in whose care it is consigned must dray it a short distance to the river. The Cincinnati, Burnside & Cumberland River Railway owns and operates an "incline" which is located on the river bank a short distance from the freight house, and all less-than-carload freight consigned in care of the Burnside & Burkesville Transportation Company is loaded

into the boats over this incline by employees of the boat line. The railroad makes no separate charge to the boat line for the use of this incline. The Cumberland Transportation Company owns and operates its own incline, which is located near that used by its competitor.

In the handling of carload freight the Burnside line has a decided advantage over the complainant. The Cincinnati, Burnside & Cumberland River Railway has constructed a switch from its main line to the water level for the purpose of permitting carload freight to be handled directly from the cars to the boats of the Burnside line. This spur is built on a grade and the portion of it which is at water level, and from which freight can be conveniently transferred to and from the boats, will accommodate only from 3 to 10 cars, according to the amount of water in the river. The Cumberland line is not given access to this water-level switch and must load and unload its carload freight, as well as its less-than-carload freight, over its incline. The defendants maintain that the water-level track is so small that two boat lines could not be given access to it, especially when an accumulation of freight has resulted from the low stage of the water. The defendants estimate that it would cost from \$20,000 to \$30,000 to extend the water-level switch so that it would accommodate two boats at the same time.

Whether the traffic on this part of the Cumberland River is sufficiently heavy to support two boat lines was the subject of much controversy of record. The Burnside & Burkesville Transportation Company answers the question in the negative, and in support of its contention shows that the Cumberland line has operated at a loss from the first, and that it has been able to escape financial embarrassment only by drawing on the resources of the Cumberland Grocery Company. It is further shown that during the fiscal year 1914 the Burnside line sustained a total operating loss of \$1,007.80, although in the three previous years it realized profits of from \$2,000 to \$8,000 annually. The president of the Burnside line stated at the hearing that it will be impossible for his company to continue to operate from Burnside if the complainant's prayer is granted. The treasurer of the Cumberland line states on the other hand that that company will continue to operate whether the prayer of the complaint is granted or denied, and that the benefit accruing to the grocery company from its operation of the transportation company more than repays the former for the advances which it makes to the latter. The Burnside line is privately owned and can not continue to operate if its present losses are continued, but it appears to be a matter of comparatively little consequence to the Cumberland Transportation Company, buttressed by the financial resources of the Cumberland Grocery Company, that its boat line is operated at a loss.

At present the Cumberland line meets the joint through rates published by the defendants in connection with the Burnside line. On all traffic moving from Burnside the defendants require the Cumberland line to pay the Burnside proper rates, so that the Cumberland line receives for its haul only the difference between the joint through rates and the Burnside proper rates. For example, the joint through rate on lumber from landings below Lock No. 21 to Cincinnati is 17 cents per 100 pounds. The rate from Burnside to Cincinnati is 11 cents, leaving the Cumberland line 6 cents for its haul from the landings to Burnside, while the division of the 17-cent rate accruing to the Burnside line on the same traffic is said to be 8½ cents. This not only results in a serious impairment of the revenues of the Cumberland line, but gives its competitor a decided advantage.

The Board of Commerce of Lexington, the Chamber of Commerce of Cincinnati, and the Louisville Board of Trade have intervened in opposition to the granting of the relief which the complainant seeks. Among the members of these organizations are a number of jobbers who are the principal competitors of the Cumberland Grocery Company in distributing groceries to points in the Cumberland Valley between Burnside and Carthage, Tenn. Their objection to the establishment of through routes and joint rates in connection with the Cumberland Transportation Company is based on the fact that the withdrawal of the Burnside line would probably make it necessary for them to intrust their freight to the complainant, a company which is owned by their principal competitor, and which, it is contended, could not profit by the expeditious handling of its competitors' wares.

The defendants maintain that the relationship between the Cumberland Grocery Company and the Cumberland Transportation Company is such that the handling by the transportation company of all the freight shipped by or to the grocery company is a violation of the spirit of the "commodities clause" of section 1 of the act to regulate commerce, and that the granting of complainant's prayer would be tantamount to an approval by the Commission of that relationship. More than one-third of the freight handled by the Cumberland line consists of freight owned by the grocery company. The petitioner shows, however, that the commodities clause does not make it unlawful for boat lines to transport commodities owned by them, and maintains that the mere possibility of the petitioner's violation of a penal provision of the act should not preclude the establishment of through routes and joint rates if the evidence of record justifies their establishment. The defendants also call to our attention the fact that the charter of the Cumberland Grocery Company does not permit that company to own, operate, or have an interest in a transportation company.

At the hearing the defendants contended that the complainant is financially irresponsible, and they question the propriety of entering into joint arrangements with a company whose accounts are carelessly kept and which is admittedly operated at a loss. This contention was met with an offer by complainant's counsel to give bond, in any sum which the Commission may require, to protect the defendants against any loss or damage which they might sustain by reason of the complainant's default or miscarriage. In any event, the refusal to establish through routes and joint rates can not be justified by showing that the defendants question the financial strength of the petitioner. *Kansas City Missouri River Navigation Co. v. C. & O. Ry Co.*, 34 I. C. C., 67.

It was further contended on behalf of the defendants that the withdrawal of the Burnside line would result in diverting traffic through Nashville. The Louisville & Nashville Railroad extends from Louisville to Nashville, and publishes joint rates with the Ryman line, which operates boats from Nashville almost as far north as Burnside. Some traffic from the north now moves by this route, and the defendants insist that jobbers located in Cincinnati and Louisville would route their shipments through Nashville rather than intrust them to a transportation company controlled by their principal competitor, and that such diversion of the traffic would necessarily reduce the tonnage handled by the defendants.

The petitioner relies principally on our decision in *Decatur Navigation Co. v. L. & N. R. R. Co.*, 31 I. C. C., 281, and the similarity between that case and this is striking. In that case the relationship between the Decatur Navigation Company and the Hitt Lumber Company was similar to the relation in this case between the complainant and the grocery company. In that case, as in this, it was alleged that the traffic was not sufficient to support two boat lines; that the complainant was financially irresponsible; and that the granting of the petition would be disastrous to the petitioner's competitors. Furthermore, it was shown in that case that a large proportion of the freight carried by the petitioner belonged to the Hitt Lumber Company, the proprietary company.

Our conclusion in the case cited was that the complainant's prayer should be granted; that a navigable river, being a natural highway, should be open to the free and unrestricted use of any who desire to avail themselves of its advantages; and that a transportation company operating on a navigable river is *prima facie* warranted in asking for the establishment of through routes and joint rates with rail lines reaching the river.

The difference between this case and the case cited is not sufficiently marked to warrant a conclusion different from the one there

reached. The defendants' contention that much traffic would be diverted through Nashville if the complainant's prayer is granted is based on the assumption that the Cumberland line would enjoy a monopoly of all traffic on the river moving through Burnside. The objections of the interveners are admittedly predicated on the same assumption. The evidence of record does not justify that assumption. In answer to the defendants' contention that the facilities at Burnside are not adequate for the interchange of traffic with two boat lines it is only necessary to note that that contention assumes that the boats of both lines must load or unload at precisely the same time, an assumption which is hardly warranted in view of the fact that each line makes but two round trips a week. Furthermore, it will be noted that this contention is inconsistent with the defendants' evidence, much relied upon, to the effect that a finding in complainant's favor would result in the withdrawal of the Burnside line and would give the Cumberland line a monopoly of all traffic on this part of the river.

The record shows that the operation of the Cumberland line has been beneficial to the public. Not only have shippers had a more frequent service, but the rates are considerably lower than they were when the Burnside line was without competition. For a number of years the local rate on all classes between landings on the river was 22½ cents per 100 pounds, while the present rate is 15 cents per 100 pounds, and a number of the commodity rates have also been reduced.

We are of opinion and find that the defendants should be required to establish through routes and joint rates in connection with the Cumberland Transportation Company between landings on the Cumberland River served by the boats of that company and interstate points on defendants' lines in the same manner, on the same terms, and to the same extent as such through routes and joint rates are contemporaneously maintained by the defendants in connection with the Burnside & Burkesville Transportation Company. We are further of opinion, however, that the petitioner should first execute a good and sufficient bond to the defendants jointly in the sum of \$5,000 to protect the defendants against any loss which they may sustain through the debt, default, or miscarriage of the petitioner. Upon being notified that such a bond has been executed, an order will be entered in conformity with our conclusions herein.

No. 5701.

**IN THE MATTER OF SAFETY APPLIANCES ON EQUIP-
MENT OF RAILROADS IN PORTO RICO.**

Submitted June 24, 1915. Decided December 27, 1915.

1. Respondents' trains composed of cars exclusively used for transportation of sugar cane might well be excepted, as recommended to Congress, from the provisions of the safety appliance acts relating to power brakes.
2. Pending action by Congress in the premises locomotives and cars of respondents must be made to conform with the requirements of those acts.
3. Order of April 17, 1913, vacated as of January 1, 1917, in so far as it extends the time for full compliance with those acts.

F. H. Dexter for Compañia de los Ferrocarriles de Puerto Rico and American Railroad Company of Porto Rico.

F. E. Neagle for Central Fortuna, Incorporated, Anasco & Alto Sano Railroad, and Guanica Central.

Charles Hartzell for Ponce & Guayama Railroad and Compañia Azucarero El Ezemplo.

Luis Bunnigan for Fajardo Development Company and for Vega Alta Railroad.

Antonio Roig for Humacao & Humacao Playa Railroad.

Frank Martinez and *Ramon Valdes* for Linea Ferrea del Oeste.

J. H. Brown for Porto Rico Railway, Light & Power Company.

J. R. Soler for Plazuela Sugar Company.

H. L. Kern for the People of Porto Rico.

Elton Warner for Franchise Committee of the Executive Council of Porto Rico.

REPORT OF THE COMMISSION.

HALL, Commissioner:

On March 2, 1893, "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes." was approved. It was amended April 1, 1896, and was further amended by an act approved March 2, 1903. A supplementary act was approved April 14, 1910, and amended March 4, 1911. These acts are commonly known as the "safety appliance acts."

By their terms, as indicated by the title of the act of 1893, quoted above, these acts imposed upon common carriers subject thereto certain obligations with respect to fitting their locomotives and cars with various specified appliances designed to afford greater safety to their employees and to travelers.

The act of 1893, as amended in 1896, applied only to "any common carrier engaged in interstate commerce by railroad." By the amendatory act of 1903 the provisions and requirements of the act of 1893 were made applicable "to common carriers by railroads in the territories and the District of Columbia."

Even after this amendment, however, it was not considered that the provisions of the safety appliance acts were applicable to common carriers by railroad in Porto Rico, the general understanding being that the territories referred to were those included within the territorial limits of the United States. The Commission up to the present time has exercised no authority over common carriers by railroad in Porto Rico.

It seems not inappropriate to outline briefly the mode of government of Porto Rico since its acquisition by the United States, as set forth in *Ochoa v. Hernandez*, 230 U. S., 139.

By act of April 25, 1898, 30 Stat., 364, ch. 189, Congress declared that a state of war existed between this country and Spain. Porto Rico, then a colony of Spain, was occupied by the military forces of the United States under Major General Miles on July 25, 1898. A protocol was signed in Washington, August 12, 1898, 30 Stat., 1742, under which hostilities were suspended pending negotiation of a treaty for the establishment of peace. In this protocol Spain agreed to cede the island of Porto Rico to the United States and to immediately evacuate it. Commissioners were appointed to meet at Paris and proceed to the negotiation and conclusion of the treaty. Pending the negotiation of the treaty, this government by its military forces occupied Porto Rico as a colony of Spain and was bound by the principles of international law to do whatever was necessary to secure public safety, social order, and the guaranties of private property. The island, and the islands and keys adjacent and belonging to it, were by order of October 1, 1898, General Orders, No. 158, established as a military department. A treaty was signed at Paris December 10, 1898, and ratifications were exchanged at Washington April 11, 1899, 30 Stat., 1754. By the terms of this treaty Porto Rico was ceded to the United States, and "the civil rights and political status of the native inhabitants of the territory hereby ceded to the United States shall be determined by the Congress." Article IX, p. 1759. The military occupation of Porto Rico was immediately followed by the establishment of a provisional government, and this

government continued in control of the affairs of the island continuously until the ratification of the treaty, and thereafter until the enactment of the Foraker act of April 12, 1900, entitled "An act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes," 31 Stat., 77, ch. 191.

The civil government provided by the Foraker act consisted of a governor and executive council, a legislature subject to the laws of Congress, and courts. Provision was made for review by the Supreme Court of decisions of the highest court of Porto Rico.

Section 14 of this act provided:

The statutory laws of the United States not locally inapplicable • • • shall have the same force and effect in Porto Rico as in the United States.

The Supreme Court has held that Porto Rico is an organized territory, appurtenant to, but not incorporated in, the United States.

In *American R. R. Co. v. Birch*, 224 U. S., 547, it was held that "the employers' liability act expressly applies to Porto Rico." The safety appliance acts were held to extend to Porto Rico in *American R. R. of Porto Rico v. Didrichsen*, 227 U. S., 145.

As a result of the decision by the Supreme Court that the safety appliance acts applied to common carriers by railroad in Porto Rico, and upon representations that such carriers had not fully complied with the provisions of said acts, the Commission, by order of April 17, 1913, entered upon a proceeding of investigation—

to determine the character and kind of equipment used in the transportation of passengers and property by common carriers by railroad in Porto Rico, the safety appliances now installed and what further appliances are or may be required under the safety appliance acts.

It was further ordered—

That the time within which common carriers by railroad in Porto Rico shall comply with the said safety appliance acts to any greater extent than they do at the present time be, and the same hereby is, extended to a date to be hereafter fixed by this Commission.

Pursuant to this order, hearings were held at San Juan, Porto Rico.

For a better understanding of the situation in Porto Rico, a brief reference to the physical features of the island seems proper.

The island is about 100 miles long from east to west, about 40 miles wide near the west end, and somewhat narrower toward the east end. A range of mountains, varying in height from 2,000 feet to about 3,750 feet on El Yunke peak in the northeast corner, crosses the island from west to east, descending abruptly to the sea at each end. Because of these mountains no inland railways of any considerable length have been constructed.

Many fine highways have been built around and across the island, and most of the products of the interior are carried to the coast in carts drawn by bullocks or on motor trucks. At the hearings it was stated that out of a total population of 1,200,000 but 200,000 depend upon rail transportation for the necessities of life.

The map given below shows the lines of railroad now operated by the different common carriers on the island. All are of less than standard gauge.

These lines of railroad are owned by the following carriers:

Compania de los Ferrocarriles de Puerto Rico, American Railroad Company of Porto Rico, lessee.—Main line about 220 miles. This railroad connects the principal cities along the north and west coast

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C. d. I. F. d. P. R., *Compania de los Ferrocarriles de Puerto Rico*; C. F., *Central Fortuna, Incorporated*; P. & G., *Ponce & Guayama Railroad*—operated by *American Railroad Company of Porto Rico*.

F. D. Co., *Fajado Development Company*.

V. A., *Vega Alta Railroad*.

H. & H. P., *Humacao & Humacao Playa Railroad*.

L. F. d. O., *Línea Ferrea del Oeste*.

A. & A., *Anasco & Alto Sano Railroad*.

P. R. R., L. & P. Co., *Porto Rico Railway, Light & Power Company*.

and those as far east on the south coast as Ponce. The lessee company also operates the railroad between Ponce and Guayama. Part of this road is owned by the Central Fortuna, Incorporated, and the remainder by the Ponce & Guayama line. The American Railroad Company of Porto Rico also operates the line running from San Juan to Carolina.

Central Fortuna, Incorporated.—Main line about 5 miles, extending eastwardly from Ponce to the tracks of the Ponce & Guayama.

Ponce & Guayama Railroad.—Main line about 36 miles, extending westwardly from Guayama to the Jacaguas River, where it connects

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with the Central Fortuna. The two constitute the main line operated by the American Railroad Company between Ponce and Guayama.

Fajardo Development Company.—Main line about 25 miles, extending from Maneyes to Naguabo, in the northeastern part of the island.

Vega Alta Railroad.—Main line about 7 miles, extending from Vega Alta to Dorado.

Humacao & Humacao Playa Railroad.—Main line about 7 miles, extending from Humacao to Humacao Beach.

Linea Ferrea del Oeste (and ferry).—Main line about 6 miles. This railroad, in conjunction with a ferry from San Juan to Catano, furnishes through transportation to Bayamon.

Anasco & Alto Sano Railroad.—Main line about 10 miles, extending from Alto Sano to Anasco.

Porto Rico Railway, Light & Power Company, hereinafter referred to as the Porto Rico Company.—Main line about 19 miles, extending from Caguas to Rio Piedras.

Of these nine carriers only three, the American Railroad of Porto Rico, the Linea Ferrea del Oeste, and the Porto Rico Company, carry any appreciable amount of general traffic. The others are primarily plant or industrial facilities of the sugar companies of Porto Rico for movement of cane to their respective factories. In order to obtain permission to cross public roads or streams, and to exercise the right of eminent domain, the owners of these industrial roads have assumed the duties of common carriers.

Most of the equipment used by these carriers, except the Porto Rico Company, fails to meet some requirements of the safety appliance acts. A majority of the cars used in all classes of traffic have grab irons and automatic couplers, but few are equipped with power brakes.

A summary of the mileage and equipment of the railroads above mentioned is given below.

TABLE NO. 1.—*Porto Rican railroads.*

Railroad.	Gauge.	Mileage.	Maximum grade.	Weight of rail.
			<i>Per cent.</i>	<i>Pounds.</i>
American Railroad of Porto Rico	1 meter	220	2½	60-70
Central Fortuna	do	5	1	
Anasco & Alto Sano Railroad	60 centimeters	10		
Linea Ferrea del Oeste	1 meter	25	3	66
Humacao & Humacao Playa Railroad	30 inches	7	1½	
Porto Rico Railway, Light & Power Co.	1 meter	19	1.3	60
Porto Rico Railway, Light & Power Co.	do	19	4	60
Linea Ferrea del Oeste	do	6	3	66
Vega Alta Railroad	do	7	2½	60
Total		335		

TABLE No. 2.—*Porto Rican railroads—Equipment.*

¹ "Miscellaneous" includes all cars which are not specifically classified in the minutes of the hearings.
² Information not furnished.
³ About 600 of these cars are 4-wheel cars.

TABLE No. 3.—*Porto Rican railroads—Safety appliance equipment.*

Railroad.	Total locomotives.	Total cars.	Automatic couplers.		Power brakes.	
			Locomotives.	Cars.	Locomotives.	Cars.
American Railroad of Porto Rico.....	46	1,207	46	1,207	35	230
Central Porto Rico Railroad.....	1	94	1	94		
Anasco & Altozano Railroad.....	3	35	3	35	3	
Fajardo Development Co.....	6	350	6	350	6	
Humacao & Humacao Playa Railroad.....	3	163			3	
Ponce & Guayama Railroad.....	5	546	5	335	5	
Porto Rico Railway, Light & Power Co.....	6	206	6	206	6	206
Línea Ferrea del Oeste.....	(?)	29		15		
Vega Alta Railroad.....	4	174	4	14	4	
Total.....	77	2,813	74	2,265	62	436

¹ About 600 of these cars are 4-wheel cars.
² Information not furnished.

The transportation is chiefly of sugar cane. This is practically the only commodity which is handled by the railroads owned by the sugar companies, and in 1912 furnished 66 per cent of the total freight traffic carried by the American Railroad, the longest railroad on the island. Many of the cars so used are of the four-wheel type. All are considerably smaller and lighter than the eight-wheel car of standard American manufacture. It is principally with regard to these cane cars that the carriers fail to observe the requirements of the safety appliance acts.

At the hearings no reasons were given why the carriers should not be required to equip all their cars with automatic couplers and grab irons. It was, however, strongly urged that, in view of the peculiar conditions under which cane moves, all equipment used exclusively for cane traffic should be excepted from those provisions of the safety appliance acts which require the use of power brakes. Cane is hauled almost entirely at night and at a low rate of speed, with

frequent stops. Except on the American Railroad, and the Linea Ferrea del Oeste, no other commodity is moved at night. The cane trains are operated for about six months during the year, from December to June. During the rest of the year these cars are stored.

As bearing upon the reasonableness of the exemption sought in favor of cane cars the carriers cite the statutory exemption in favor of equipment used exclusively for the transportation of logs.

The provision authorizing such exemption for logging cars is as follows:

Provided, That nothing in this act contained shall apply to trains composed of four-wheel cars or to trains composed of eight-wheel standard logging cars where the height of such car from top of rail to center of coupling does not exceed 25 inches, or to locomotives used in hauling such trains when such cars or locomotives are exclusively used for the transportation of logs.

There is plainly a fair analogy between such trains and those composed exclusively of cane cars. Moreover, testimony was given by the carriers showing that in the handling of this cane traffic accidents that might possibly have been averted by the use of power brakes have been exceedingly rare.

Upon a consideration of the whole record we are of opinion, as recommended in our twenty-ninth annual report to Congress, that trains composed of cars exclusively used for the transportation of sugar cane on common-carrier railroads in Porto Rico should be excepted from the provisions of the safety appliance acts relating to power brakes.

The present acts neither make such exception nor confer upon the Commission the power to make it.

Pending action by Congress in the premises we are constrained to hold that the cars, as well as the locomotives, of the carriers above mentioned must be made to conform with the requirements of the safety appliance acts.

Upon proper showing, the Commission, as authorized by the safety appliance acts, has extended the time in certain instances within which common carriers by railroad in the United States might comply with the requirements of those acts. Under the peculiar circumstances of this case it would seem but just that a similar course should be pursued. From the record it appears that, while one carrier needed no extension of time, others estimated that it would take several years, and in one case 10 years, to effect compliance. Acquiescence in these estimates would unduly prolong the period of noncompliance. Upon the record we find that the carriers respondent herein should comply fully with the requirements of the safety appliance acts on or before January 1, 1917. Any modification which may be made by Congress

of the requirements of those acts will necessarily modify to that extent the effect to be given to the conclusions here reached. An order will be entered vacating, as of January 1, 1917, our order of April 17, 1913, in so far as it extends the time for full compliance with those acts.



INVESTIGATION AND SUSPENSION DOCKET No. 356.
RULE 34, OFFICIAL CLASSIFICATION No. 41.
CLASSIFICATION NESTING RULE.

Submitted June 28, 1915. Decided December 24, 1915.

Rule relating to the nesting of articles recommended by the Committee on Uniform Classification slightly amended and with certain exceptions authorized for use in official, southern, and western classification territories. A few articles that can not conform to the restrictions surrounding a recognized practice should not prevent establishment of a uniform general rule. Ratings on such articles should be treated separately.

R. E. Clarke for Lalance & Grosjean Manufacturing Company.

J. E. Masten for Lisk Manufacturing Company, Limited, and Reed Manufacturing Company.

A. E. Beck for Merchants' & Manufacturers' Association of Baltimore.

L. E. Campbell for Central Stamping Company.

Philip Witherell for Williams Manufacturing Company.

W. D. Ballou for M. E. Ballou & Son.

Douglas Swift, R. N. Collyer, and A. L. Viles for Official Classification Committee.

J. E. Williams for Uniform Classification Committee.

H. C. Bush for Western Classification Committee.

F. W. Gwathmey for lines members of Southern Classification Committee.

W. H. Chandler for Boston Chamber of Commerce.

G. M. Freer for Cincinnati Chamber of Commerce.

F. B. James, E. E. Williamson, and R. G. Williams for National Association of Basket and Fruit Package Manufacturers.

F. D. Lake for Menasha Wooden Ware Company.

A. Larsson for National Association of Box Manufacturers.

J. C. Lincoln for Merchants Association of New York.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

This proceeding involves the reasonableness of the so-called nesting rule, being rule 34 of official classification No. 41. Previous issues of that publication had defined nesting as follows:

The term "nested" refers to a series of similar articles nested, or inclosed one within the other.

The proposed rule is as follows:

SECTION 1. The term "nested," used in package specifications in this classification, means that two or more different sizes of the article for which the "nested" specification is provided must be inclosed each smaller within each next larger, or that two or more of the article for which the "nested" specification is provided must be placed one within the other so that each upper article will not project above the next lower article more than one-third of its height.

SEC. 2. The provisions shown in section 1 of this rule prohibit the application of "nested" ratings when articles of different name or material, whether grouped in one description or shown separately, are nested or inclosed one within the other.

Upon the protest of shippers of galvanized and enameled sheet-metal ware, hereinafter referred to as tinware, and of shippers of wooden shipping drums and boxes, wooden baskets, and wooden and fiber pails, the effectiveness of the rule was suspended pending this investigation of its propriety.

The term nesting in railroad terminology signifies the packing of like articles one within the other in such manner as to leave one as little exposed above the top of the other as practicable. Nesting minimizes the space occupied by the shipment, and the practice of applying on articles so packed lower ratings than are applicable on the same articles not nested has been followed for many years, the element justifying the difference being the relation of weight to displacement. The rule recommended by the Committee on Uniform Classification was as follows:

SECTION 1. The term "nested," used in package specifications in this classification, means that three or more different sizes of the article, for which the "nested" specification is provided, must be inclosed each smaller within each next larger, or that three or more of the article for which the "nested" specification is provided must be placed one within the other so that each upper article will not project above the next lower article more than one-third of its height.

SEC. 2. The provisions shown in section 1 of this rule prohibit the application of "nested" ratings when articles of different name or material, whether grouped in one description or shown separately, are nested or inclosed one within the other.

This rule, hereinafter referred to as the uniform rule, was accepted by the Western Classification Committee and published in western classification No. 51. That issue contained many changes from the previous classification and was suspended pending an investigation concerning its new ratings. We held upon the record that the carriers had not justified the proposed uniform rule. *West-*

ern Classification No. 51, 25 I. C. C., 442, 486. Thereupon the rule was so modified as to include two articles when nested instead of a minimum of three articles. This removed the objection that had been made to it as first published. The southern lines likewise accepted the uniform rule in their southern classification No. 39 and, no objection to it having been made, it was permitted to take effect. The Official Classification Committee adopted the rule established by western classification lines, which is the rule now under consideration. At this time, therefore, different rules are in force in the three classification territories, resulting from an attempt by the carriers to arrive at a uniform rule.

In view of this lack of uniformity in the three territories this proceeding was later broadened by order of the Commission so as to embrace an inquiry into the conditions and practices attending the transportation of shipments under the nesting rules in southern and western classification territories, and with a view, if found practicable, to prescribing a uniform rule. A special committee representing the three classification territories has cooperated with the Commission in making a thorough investigation of the conditions surrounding the nesting of shipments and particularly the nesting of the articles as to which protests against the proposed rules had been made; the committee has also made an effort to ascertain to what extent the commodities shipped by protestants could not meet the requirements of the proposed uniform rule. The report of the carriers' representatives on the committee has been made a part of the record. It recommends the adoption of the uniform rule with the addition of the words "unless otherwise specified." It shows that very few commodities would be affected by the limitation of the rule to shipments of three or more articles to a nest or by the rule limiting the projection of one article above the other $33\frac{1}{3}$ per cent. Some of the articles on which nested ratings are desired project as much as $71\frac{1}{2}$ per cent.

The protestants submitted a number of exhibits, some of which constitute nests as contemplated by the respondents, while others could not be so considered within the generally accepted sense of the term. There are three types of shipments for which shippers claim consideration, although not conforming to the requirements of the uniform rule. The first is where, because of commercial conditions, only two articles are shipped one within the other, as, for example, ash or garbage cans; the second is best illustrated by wooden stave or splint baskets and wooden pails, usually shipped in lots of six or more but which do not nest more than 50 per cent. The third type consists of single articles made up of several sections, such as a combination dinner pail, the various parts being placed inside the pail.

The respondents in official classification territory argue that the principle of the proposed rule is similar to that of according lower
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ratings on articles knocked down than when set up, and that since lower ratings for nested articles find their justification in the increased density for the space occupied lower ratings for nested articles are not justified except when the nesting results in the increased density for the space occupied or, in other words, a substantial increase in the weight of the shipment in proportion to the room it takes in the car. It is contended that if but two articles are placed one within another the weight of the shipment is not increased to such a degree as to justify a lower rating on the nested article, and, in order that such a rating may be accorded, three or more articles of the same name or material and with a projection one above the other of not more than $33\frac{1}{3}$ per cent ought be shipped. This is necessary in order to prevent nesting ratings being applied on shipments that can not properly be considered as nested. The respondents submitted exhibits showing that there are 137 articles in the official classification carrying lower less-than-carload ratings when nested than when not nested, and that as to 62 of those articles rated first class or higher, nested and not nested, the reduction in rates effected by the nested ratings averages 40 per cent. As to 75 ratings lower than first class the reduction resulting from nested ratings averages 18.9 per cent on the basis of the class rates from New York to Chicago. Another exhibit, covering 2,434 shipments made during a period of 30 days, shows that in only 24 packages, or 1 per cent of the shipments, were there nests of but two articles; that in 2,410 packages, constituting 99 per cent, there were nests of three or more; that $72\frac{1}{2}$ per cent projected $33\frac{1}{3}$ per cent or less; that 18.3 per cent projected over $33\frac{1}{3}$ per cent but not more than 50 per cent, and that 9.2 per cent projected more than 50 per cent. The respondents urge the rule recommended by the special committee but recognize that some exceptions to it must be made. They argue that special conditions affecting a few commodities, which can be treated separately in the tariffs of the respondents, ought not to be permitted to break down the general rule.

The shippers of tinware, while agreeing that in the main the uniform rule is satisfactory, desire exceptions made as to certain commodities, either because there is a trade demand for those commodities in two sizes only or on account of the weight resulting from their particular method of construction. Consideration has been given by the respondents to this request and on certain of these commodities specific ratings have been established. Provision has been made for others by limiting to two the number required to nest. The carriers are unwilling to make the changes desired by the protestants on a few of the commodities, namely, wash boilers, combinets, dinner pails, and bread or cake boxes. They assert that with respect to tin double boilers the protestants have not submitted sufficient in-

formation to warrant the desired change. No action appears to have been taken with respect to Berlin pans, pots and kettles, scoops and canisters, and wooden drums. Since the hearing the respondents have also made certain changes in their ratings to meet protests respecting wooden boxes, baskets, and wooden or fiber pails.

It appears that a general rule to apply in the three classification territories is practicable. Ratings on such articles as do not nest in conformity with the term but which, by reason of their weight or commercial unit, may merit consideration should be treated separately. It should be observed that merely bundling similar articles or packing together like articles which barely fit one within the other does not, in our opinion, constitute such a nesting as to justify a reduction in rating. Obviously in a working classification every contingency can not be provided for and necessarily some exceptions must be established to a general rule of this character. The nesting of tinware, for example, is admitted by the protestants to present many intricate problems.

As to those articles respecting which the respondents are unwilling to make the desired changes or as to which they claim to be without adequate information, there is not sufficient evidence on the record to enable us to reach any conclusions. Such commodities may be formally brought to our attention for determination.

In view of all the facts and circumstances presented, we are of the opinion, and so find, that the rule recommended by the Committee on Uniform Classification, with the words "unless otherwise specified" prefixed to it, will be a reasonable rule and may be established in official classification territory.

The uniform rule has been in effect in southern classification territory for the past three years and, while it may be retained, we are of the opinion that it should begin with the words "unless otherwise specified," and that exceptions should be established similar to those made by the respondents in official classification territory respecting ash or garbage cans, baskets, pails, and boxes. No action is necessary as to tinware, not otherwise specified, as no nested ratings are carried thereon in the southern classification.

No testimony was offered in behalf of the western classification lines, but a representative of that committee signed the report urging the adoption of the Uniform Classification Committee rule as amended. The rule which we have above authorized may be established in the western classification provided changes respecting baskets, pails, and boxes are made in line with those found necessary and made by Official Classification Committee lines. Stock-watering tanks should be provided for in nests of two. No action is necessary as to tinware so long as the present notes now contained in the western classification are continued.

INVESTIGATION AND SUSPENSION DOCKET No. 636.
BROOM CORN TO CINCINNATI, OHIO.

Submitted November 1, 1915. Decided December 28, 1915.

Proposed increased rate on broom corn in carloads from East St. Louis, Ill., to Cincinnati, Ohio, found to have been justified, and orders of suspension vacated.

L. F. Deininger and *L. W. Perkins* for protestants.

C. P. Stewart for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

F. H. Behring for Southern Railway Company.

Edward Hart, jr., for Baltimore & Ohio Southwestern Railroad Company.

B. H. Dally for Vandalia Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Tariffs filed by respondents to take effect May 14, 1915, proposed to cancel respondents' proportional commodity rate of $31\frac{1}{2}$ cents per 100 pounds on broom corn in carloads from East St. Louis, Ill., to Cincinnati, Ohio, and to apply instead the second-class rate of 36.2 cents. Upon protest by the F. Jelky & Sons Company, commission merchants in Cincinnati, the tariffs were suspended until September 11, 1915, and later until March 11, 1916.

Broom corn is produced principally in Missouri, Kansas, Texas, and Oklahoma. No joint rates apply from producing points to points in central freight association territory. Through rates apply constructed by combinations of the rates applicable to and from Memphis, Tenn., or East St. Louis, Ill. In October, 1904, the proportional rate from East St. Louis to Cincinnati and Louisville, Ky., was 25 cents. The rate to both points was increased in April, 1908, to $25\frac{1}{2}$ cents, and in August, 1914, to 30 cents. An additional increase was effected in October, 1914, following *The Five Per Cent Case*, 31 I. C. C., 350, and 32 I. C. C., 325, to $31\frac{1}{2}$ cents, the present rate. Prior to January, 1908, the second-class rate from East St. Louis to Louisville and Cincinnati was 34 cents. From January, 1908, to October, 1914, it was $34\frac{1}{2}$ cents. Effective October 26, 1914, it was increased to 36.2 cents, following *The Five Per Cent Case, supra*.

Respondents state that proportional rates on broom corn from East St. Louis to Cincinnati were originally established to meet competition through Memphis. They show that from most of the producing points west of the Mississippi River the lowest combination, based on the suspended rate, is through East St. Louis, and argue that therefore no reason exists for the present adjustment. They assert that if they are not permitted to increase the Cincinnati rate to the class basis other points in central freight association territory and trunk line territory will be unduly prejudiced unless proportional rates are established to all such points. *Urbana Broom Co. v. C., C., C. & St. L. Ry. Co.*, Docket No. 6294, unreported, is cited, in which the application of the second-class rate from East St. Louis to Urbana was attacked as unreasonable and unjustly discriminatory, particularly in comparison with the proportional rate to Cincinnati, and was found to be unjustly discriminatory although not unreasonable, the defendants therein being required to remove the discrimination by the establishment of a rate on broom corn from East St. Louis to Urbana which would bear the same relation to the second-class rate from East St. Louis to Urbana that the rate on broom corn from East St. Louis to Cincinnati bore to the second-class rate concurrently applicable from East St. Louis to Cincinnati. To comply with the order entered the defendants established the rate now under suspension. Respondents also contend that the proposed tariffs would conform the Cincinnati rate to the rates on the same commodity to other points similarly situated and eliminate the existing inconsistency. Broom corn has been classified second class in official classification territory for over 20 years, and shipments have moved freely under second-class rates.

Protestants are jobbers and their objection to the proposed rate is mainly that it will restrict the territory in which they can compete successfully with dealers at other points, including Chicago. Competition with Chicago jobbers is encountered principally at northern Ohio points and protestants show that, under the rates in effect to and from Chicago, dealers there now have an advantage to many of these points, and that their advantage will be increased if the proposed rate to Cincinnati becomes effective. We are not concerned, however, with the relationship between the total in and out rates through Chicago and the in and out rates through Cincinnati. The issue is the reasonableness of the application of the second-class rate on shipments from East St. Louis to Cincinnati.

Protestants also compete with jobbers at Louisville and at other points in the south and the southwest. Since 1904 the proportional rates on broom corn from East St. Louis to Cincinnati and Louisville have been the same. The tariff under suspension does not propose

to increase the Louisville rate. The class rates from East St. Louis and Louisville to Cincinnati have also been identical during the same period, and no change in this relationship is proposed. Protestants insist that the proposed increased rate to Cincinnati would practically exclude them from markets in which they have been able to compete with Louisville. Respondents reply, however, that the Louisville rate was not increased because of a growing tendency to relate the rates to Louisville and Cincinnati to the different distances to the two points, rather than because of competition through the Memphis gateway.

The short-line distances from East St. Louis are 336 miles to Cincinnati and 271 miles to Louisville. The rate to Louisville, moreover, is said to be compelled in that the Louisville & Nashville Railroad has insisted that the rate from East St. Louis to Louisville shall not exceed the rate from Memphis to Louisville. As a result of *The Five Per Cent Case, supra*, the rate from East St. Louis to Louisville is now $1\frac{1}{2}$ cents higher than from Memphis to Louisville. The proposed rate to Cincinnati is 1.2 cents higher than the rate from Memphis to Cincinnati.

We find that respondents have justified the increased rate proposed and our orders of suspension herein will be vacated. An order will be entered accordingly.

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INVESTIGATION AND SUSPENSION DOCKET No. 621.
BROOM CORN TO FRANKFORT, KY.

Submitted December 1, 1915. Decided December 28, 1915.

Proposed increased rate on broom corn in carloads from East St. Louis, Ill., to Frankfort, Ky., found to have been justified and order of suspension vacated.

J. V. Norman for complainant.

William Burger for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Schedules contained in tariffs filed by respondents to take effect April 1, 1915, proposed to increase respondents' present carload commodity rate of 32.5 cents per 100 pounds, minimum 14,000 pounds, on broom corn from East St. Louis, Ill., to Frankfort, Ky., to 38.5 cents, minimum 16,000 pounds. Upon protest by the Frankfort Broom Company the schedules were suspended until July 30, 1915, and later until January 30, 1916.

Protestant has been operating a broom factory at Frankfort since 1896. Its supply of broom corn is drawn principally from Oklahoma and Kansas. No joint rates apply from Oklahoma and Kansas to points east of the Mississippi River. Through rates apply, constructed by combinations of the rates applicable to and from Memphis, Tenn., or East St. Louis, Ill. Transportation from East St. Louis to Cincinnati and Louisville is governed by the official classification which rates broom corn in carloads second class. Transportation from Louisville to Frankfort is governed by the southern classification which rates broom corn fifth class. Because of these different ratings to and from the Ohio River, few through rates are published on classes and commodities from East St. Louis to Frankfort. The rates to and from Louisville are combined. The present rate on broom corn is one of the exceptional through rates.

In 1905 the rate from East St. Louis to Louisville was 25 cents per 100 pounds; the rate from Louisville to Frankfort 7 cents. The through rate to Frankfort was the sum of these rates, 32 cents. In April, 1908, the rate to Louisville was increased 5 mills, and in September, 1908, the through rate to Frankfort was increased correspondingly to 32.5 cents. Six years later, August, 1914, the rate to

Louisville was increased to 30 cents without any increase in the rate to Frankfort. Subsequently, following *The Five Per Cent Case*, 31 I. C. C., 351, the rate to Louisville was further increased to 31.5 cents.

Respondents state that the 30-cent commodity rate to Louisville would have been canceled, leaving applicable the second-class rate of 34.5 cents, but for the fact that the fifth-class rate from Memphis to Louisville was 30 cents and the theory entertained that the East St. Louis and Memphis gateways should be kept on a parity. Respondents insist that the correct basis for constructing rates from East St. Louis to Frankfort is combination on Louisville, and state that the purpose of increasing the present rate to Frankfort is to apply that basis.

Identical class and commodity rates applied from East St. Louis to Louisville and Cincinnati during all of the period described except for short periods between changes in the rates to one point and corresponding changes to the other. In October, 1913, a broom company at Urbana, Ohio, complained to the Commission that the second-class rate of 39 cents on broom corn from East St. Louis to Urbana, 411 miles, was unreasonable and unjustly discriminatory in comparison with the commodity rate of 25½ cents then in effect from East St. Louis to Cincinnati. *Urbana Broom Co. v. C., C., C. & St. L. Ry. Co.*, Docket No. 6294, unreported. Following that complaint the rate to Cincinnati was increased to 30 cents, and later 5 per cent more to 31.5 cents. We did not find in the case cited that the class rate to Urbana was unreasonable. We found that it was unjustly discriminatory and required the carriers defendant therein to remove the discrimination by the establishment of a rate on broom corn from East St. Louis to Urbana which would bear the same relation to the second-class rate from East St. Louis to Urbana that the rate on broom corn from East St. Louis to Cincinnati bore to the second-class rate from East St. Louis to Cincinnati. The carriers proposed to cancel the 31.5-cent commodity rate to Cincinnati and to apply instead the second-class rate of 36.2 cents. The rate thus proposed was found justified in *Broom Corn to Cincinnati*, 37 I. C. C., 482.

The rate to Louisville was not increased to the class basis, as previously explained, so that the rate which we have approved on broom corn to Cincinnati will be 4.7 cents per 100 pounds higher than the rate to Louisville and 2.3 cents lower than the proposed rate to Frankfort.

Respondents contend that the class rates from East St. Louis to Louisville under which broom corn ordinarily would move are lower than the rates applicable generally in southern territory and that the rates from Louisville to Frankfort are depressed by water competition. The Louisville class-rate combination on broom corn from

East St. Louis to Frankfort would be 48.2 cents, and it is stated that this is practically the only commodity on which a rate lower than the full class combination to and from the Ohio River has been established. The commodity rates from East St. Louis to Louisville and from Louisville to Frankfort are published as local rates; but as no broom corn originates at East St. Louis or Louisville, respondents contend that they are in effect proportional rates.

Frankfort is 380 miles from East St. Louis by way of the Louisville & Nashville to Henderson, Ky., the Louisville, Henderson & St. Louis to Louisville, and the Louisville & Nashville beyond, a two-line haul. The present rate yields 1.71 cents per ton-mile for this distance, while the proposed rate would yield 2 cents. The short-line distance is 336 miles by way of the Southern Railway to Louisville and the Louisville & Nashville beyond, but the 32.5-cent rate does not apply over that route. The rate over the short line is 38.5 cents: 31.5 cents for the 271-mile haul of the Southern Railway to Louisville, and 7 cents for the Louisville & Nashville's 65-mile haul from Louisville to Frankfort. Respondents show that the suspended rate compares favorably with rates from East St. Louis and Chicago, Ill., to points in central freight association territory for about the same distances. Rates emphasized are 42.7 cents from Chicago to Frankfort over a two-line haul of 371 miles and the second-class rate of 36.2 cents from East St. Louis to Cincinnati, 339 miles, which, as previously stated, has been found reasonable for broom corn.

The rate on brooms in carloads from Frankfort to East St. Louis is 30 cents per 100 pounds. Respondents admitted the inconsistency of a higher rate on broom corn than on the finished product in the opposite direction, and a tariff filed, to take effect December 22, 1915, canceled the rate on brooms from Frankfort to East St. Louis and St. Louis, leaving applicable the combination of rates to and from Louisville.

Much of protestant's testimony relates to the effect the proposed rate would have upon protestant's ability to market its product in competition with other manufacturers. But this question involves rates on inbound raw material and on the outbound finished product to and from various competitive points and is outside of the issues presented, which concern only the rate on broom corn from East St. Louis to Frankfort.

Protestant also compares the revenue of 18.8 cents per car-mile from the present rate with the Louisville & Nashville's average revenue of 15.77 cents per loaded car-mile in 1913 for an average carload of 20.26 tons and an average haul of 171 miles. The earnings of 2.18 cents per ton-mile and 24 cents per car-mile for an average haul of 373 miles in western territory, mentioned in *1915 Western Rate*

Advance Case, 35 I. C. C., 497, at page 618, also are cited and rates from East St. Louis ranging from 18.9 cents to Evansville, Ind., 160 miles, to 75.6 cents to Amsterdam, N. Y., 984 miles.

Brooms are manufactured at Evansville, and the rate cited to that point earns 2.36 cents per ton-mile. Respondent asserts that this rate is depressed by water competition on the Mississippi and Ohio rivers, and that because of Evansville's location near the Illinois state line the rates to Evansville, as well as to points intermediate to Evansville from East St. Louis, are affected by the low state scale of rates effective in Illinois.

We find that respondents have justified the increased rate proposed and our orders of suspension herein will be vacated.

37 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 654.
FRUITS AND VEGETABLES FROM GRAND RAPIDS, MICH.

Submitted September 15, 1915. Decided December 28, 1915.

Proposed cancellation of commodity rates on green fruits in straight or mixed carloads and green fruits and vegetables in mixed carloads from Grand Rapids, Mich., via interstate routes to destinations in the upper peninsula of Michigan found justified.

R. P. Patterson for Pere Marquette Railroad Company.

E. M. Davis for Grand Rapids & Indiana Railway Company.

A. Z. Mullins for Grand Trunk system.

S. J. O'Rigan and *F. S. Piowaty* for protestant.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Items in E. B. Boyd's tariff I. C. C. No. A-601, and in Eugene Morris's tariff I. C. C. No. 538, filed to take effect June 5, 1915, proposed to cancel commodity rates on green fruits in straight or mixed carloads and on green fruits and vegetables in mixed carloads from Grand Rapids, Mich., via interstate routes to destinations in the upper peninsula of Michigan. Upon protest the items were suspended until October 3, 1915, and later until April 3, 1916.

The present commodity rates are 25.6 cents per 100 pounds from Grand Rapids to points in the eastern part of the upper peninsula of Michigan, and 35.6 cents per 100 pounds from Grand Rapids to the Houghton-Hancock group in the western part, minimum 24,000 pounds. Marquette, Mich., is a representative point taking the 25.6-cent rate; Houghton a representative point taking the 35.6-cent rate. These rates apply over the Pere Marquette Railroad and the Grand Trunk system, across lake to Manitowoc and Milwaukee, Wis., and thence over the Chicago & North Western Railway and the Chicago, Milwaukee & St. Paul Railway and connecting carriers to destinations. Fruit and vegetables are received in carloads at Grand Rapids and distributed in mixed carload and less-than-carload lots. If the suspended items are allowed to take effect, class rates will apply on mixtures of fruits and vegetables and the freight charges will be based on the highest rate and highest minimum weight applicable on any article in the mixture, unless the composition of the mixture is such that the application of less-than-carload class rates at actual

weights will give lower total charges. Class rates in cents per 100 pounds from Grand Rapids to Marquette and Houghton are as follows:

Class.....	1	2	3	4	5	6
To Marquette.....	57.3	46	35.5	26.6	19.9	18.8
To Houghton.....	73.3	59	45.5	30.6	23.9	20.8

Protestants show that a typical mixed carload of fruits and vegetables consists of 2,000 pounds each of oranges, berries, pineapples, lettuce, and onions and 5,000 pounds each of bananas and watermelons. The charges at the present rate of 25.6 cents, minimum 24,000 pounds, from Grand Rapids to Marquette amount to \$61.44. The charges on the same shipment at the class rates would amount to about \$102.40. The charges to Houghton amount to \$85.44 at the present rate and at the class rates would amount to about \$131. Commodity rates were established in 1910 to meet rates in effect by the intrastate route of the Grand Rapids & Indiana Railway and its connections, through Mackinaw City, Mich. But the traffic has moved principally over the intrastate route, although commodity rates have not applied over that route since November 6, 1914. The Pere Marquette and the Grand Trunk urge that their commodity rates constitute exceptions to the classification basis which obtains generally on fruits and vegetables throughout central freight association territory, as protestants concede. Respondents fear that if these commodity rates are continued in effect they may be used in comparisons to secure lower rates from other points. The lines operating west of the lake, which were not represented at the hearing, still maintain, with their connections, about equally favorable commodity rates from Chicago, Milwaukee, St. Paul, and Minneapolis to the destinations involved.

Upon all the facts of record we find that respondents have justified the proposed cancellations of commodity rates, and an order vacating the suspension will be entered.

**INDIANA NORTHERN RAILWAY.
SECOND INDUSTRIAL RAILWAYS CASE.**

No. 4181.

**IN THE MATTER OF ALLOWANCES TO SHORT LINES OF
RAILROAD SERVING INDUSTRIES.**

**INVESTIGATION AND SUSPENSION DOCKET No. 414.
CANCELLATION OF RATES IN CONNECTION WITH SMALL
LINES BY CARRIERS IN OFFICIAL CLASSIFICATION
TERRITORY.**

Decided January 3, 1916.

1. The Indiana Northern Railway found to be a common carrier with which connecting lines may join in publishing through rates or to which they may grant allowances for interchange switching, although under no obligation to do so.
2. An allowance for interchange switching greater than \$1.50 per car found to be excessive.

Same appearances as in original report.

SUPPLEMENTAL REPORT OF THE COMMISSION.

MEYER, Commissioner:

This supplemental report concerns the request of the Indiana Northern Railway, hereinafter called the Indiana Northern, for a determination of its right to receive allowances or divisions from connecting carriers for switching between industry or public team tracks located on its line and connecting carriers, hereinafter called interchange switching, and for intermediate switching between the Grand Trunk Western Railway and the Vandalia Railroad, hereinafter referred to as the Grand Trunk and the Vandalia.

The Indiana Northern is a short railroad, 1.6 miles long, located at South Bend, Ind. It extends from a connection with the Grand Trunk and the New York Central lines in a southerly direction through the plant inclosure of the Oliver Chilled Plow Works across West Sample street, and for approximately the same distance beyond to a connection with the Vandalia and to another connection with the New York Central lines. The entire length of the track extending from the Grand Trunk connection to the Vandalia

connection is given as 1.09 miles. About half of this track is north of West Sample street within the plant inclosure of the plow works, and half south of West Sample street. A branch extends due west from a point on the main track south of West Sample street past the foot of Webster street and connects with the private spur tracks of a feed mill, a sawmill, and a fuel yard, enterprises which have no connection with the plow works.

Effective April 1, 1914, the connecting trunk lines canceled their absorptions of the Indiana Northern's charge of \$2 per car for interchange switching except that the Vandalia continued to pay \$2 per car on traffic from the Grand Trunk interchanged by means of the Indiana Northern. These cancellations were not among those suspended in this proceeding, and consequently became effective except as to intrastate traffic. By order of the Public Service Commission of Indiana the trunk lines were ordered to continue their allowances on intrastate traffic. The Indiana Northern was made a party to the present proceeding by the order of the Commission instituting a general investigation concerning the rates, rules, and practices of trunk lines in official classification territory in connection with small lines of railroad owned or controlled by industries.

The Indiana Northern was incorporated April 9, 1891, under the laws of Indiana, and has been in operation approximately from that time. It is capitalized at \$20,000, all of which has been paid in, and all but 5 per cent of which is held by stockholders of the plow works. The president and secretary of the railway company, who are its only general officers, occupy like positions with the plow works. The tracks of the railway are laid upon property of the plow works and of the James Oliver estate, for which until 1915 no rental was paid. The service which the railway performs is confined to interchange switching between the industries served and connecting trunk lines and between the Grand Trunk and the Vandalia. It also performs intraplant switching for the plow works, although the plant itself operates by electric power a system of narrow-gauge tracks. The paid employees of the railway number six, and its equipment consists of two steam switching locomotives. Before June 10, 1914, the Indiana Northern made no charge for interior plant switching at the plow works, regarding the use of the right of way and the services of the employees of the plow works as consideration for the work it performed in interior plant switching. At the time of the hearing the accounts of the Indiana Northern were kept in the books of the plow works. It was intimated that in the future independent accounts would be kept according to the Commission's requirements, but the record does not disclose whether or not this

is being done. These facts show the interrelationship of the Indiana Northern with the plow works.

By its tariff on file with this Commission the Indiana Northern holds itself out to switch carload freight and also less-than-carload freight in trap cars between "private sidetracks and public team tracks" located on its line and connecting railroads at a charge of \$2 per car. The same tariff since June 10, 1914, provides a charge of 50 cents per loaded car for intraplant switching and 25 cents per car for weighing. The Indiana Northern issues no bills of lading. All line-haul charges are collected direct from the shipper by the trunk lines. The road is not a member of the American Railway Association, and does not receive reclaims. Demurrage is handled direct between the trunk lines and the consignees. Formerly free time was calculated from the first 7 a. m. after placement of cars upon industry tracks by the Indiana Northern, but since the allowances to this carrier for interchange switching have been canceled it is calculated from the time of placement on the Indiana Northern interchange track. As a consequence the free time for shippers located on the Indiana Northern is cut down by the time consumed in switching cars between their industry tracks and the interchange tracks of the trunk lines. The shippers located upon the line allege that hereby they are discriminated against as compared with shippers located upon the trunk lines.

For the year ended June 30, 1913, the total number of revenue cars switched by the Indiana Northern is given in its annual report for that year as 9,996, yielding a total switching revenue of \$19,992. Of these, 981 cars, yielding a revenue of \$1,962, were stated to have been switched for independent shippers; 2,856 cars, yielding a revenue of \$5,712, between the Grand Trunk and the Vandalia; and 6,124 cars, yielding a revenue of \$12,248, between the Oliver Plow Works and connecting trunk lines. During that year 35 trap cars of less-than-carload freight were also moved, which yielded a revenue of \$70. The cars switched to or from the Oliver Plow Works constituted 61.4 per cent of the entire interchange switching traffic, and yielded the same percentage of the total transportation revenue of the road. As has already been stated, no charge was made for interior plant switching at this time, nor were figures submitted showing the extent of the intraplant service performed. In answer to questions sent out by the Commission it was stated that the interior plant service performed by the Indiana Northern is negligible. However, upon the hearing the witness who appeared on behalf of this road admitted that there is a considerable movement from one part of the plant to another, which has at all times been performed by Indiana Northern power.

In the *Tap Line Cases*, 234 U. S., 1, 24, the Supreme Court of the United States found that—

* * * It is the right of the public to use the road's facilities and to demand service of it rather than the extent of its business, which is the real criterion determinative of its character. * * *

On applying this rule to the situation in hand we find that the Indiana Northern is a common carrier, with which connecting lines may join in publishing through rates or to which they may grant allowances for interchange switching. By this we do not approve the conduct of the Indiana Northern to which reference has been made, but this road will be expected in the future to conduct its affairs entirely independent of the plow works, and to treat that industry as any other shipper upon its line. Nor do we mean to imply that it is incumbent upon the connecting trunk lines to grant allowances to the Indiana Northern for interchange switching except in so far as switching is performed between connecting trunk lines. In the supplemental report in this proceeding with regard to the Chicago, West Pullman & Southern Railroad, 37 I. C. C., 408, we said:

* * * In this connection it should be stated that the trunk lines are not obliged to absorb the switching charges of common-carrier industrial lines. *Manufacturers Railway Co. v. St. L., I. M. & S. Ry. Co.*, 28 I. C. C., 93; *Industrial Railways Case*, 32 I. C. C., 129; *Second Industrial Railways Case*, 34 I. C. C., 596. The Commission may, however, require carriers to remove unjust discrimination occasioned by the absorption of switching charges in certain instances and not in others, under like circumstances and conditions. The Commission may also, where the facts justify such a course, require trunk lines to establish joint rates with connecting industrial lines lower than the combination on the junction point of the trunk line and the industrial line and may fix the divisions to be accorded the industrial line.

The only allowance at present accorded the Indiana Northern is \$2 per car switched from the Grand Trunk to the Vandalia, but the Indiana Northern states that the trunk lines contemplate the reestablishment of a like allowance for interchange switching to or from industry or public team tracks on its line.

For switching cars between trunk lines the latter are at liberty to employ any agent they desire, whether it be a common carrier or a private carrier. *A., T. & S. F. Ry. Co. v. Kansas City Stock Yards Co.*, 33 I. C. C., 92. Whenever the agent is controlled by a shipper the amount of the compensation paid for the service performed should be governed by the same rules which govern the amount paid for interchange switching to or from industry tracks or team tracks located on the industrial line.

Past irregularities in keeping the accounts of the Indiana Northern, its failure to charge for intraplant switching or to apportion costs between intraplant and interchange switching prevent the ascertainment of certain data necessary for a definite determination of a

reasonable allowance. The distances for which cars are switched vary from 500 feet to 4,000 feet between the plow works and connecting railroads; 2,820 feet to 6,629 feet between independent industries and connecting railroads, and 3,520 feet to 6,629 feet between the public team track of the Indiana Northern and connecting railroads. The dividends paid on the capital stock of the Indiana Northern since its organization have been as follows:

Year.	Per cent.	Amount.	Year.	Per cent.	Amount.
1894.....	40	\$8,000	1910.....	40	\$8,000
1896.....	10	2,000	1911.....	40	8,000
1904.....	50	10,000	1912.....	40	8,000
1905.....	50	10,000	1913.....	40	8,000
1906.....	40	8,000	1914.....	40	8,000
1907.....	30	6,000	1915.....	40	8,000
1908.....	30	6,000			

In the years not included in the above table no dividends were declared. Taken by itself the excessive rate of dividend paid by the road as shown above would seem to indicate that \$2 per car is much more than a reasonable charge for the switching services performed. Prior to 1915, as has already been noted, interior switching performed for the plow works took the place of a rental for the land upon which the tracks of the Indiana Northern are laid. In 1915, \$6,500 was charged to income for such rental, of which \$3,900 was paid to the plow works and \$2,600 to the James Oliver estate. This was also the first year in which the railroad received a payment for interior switching. The separation of these reciprocal services and the assignment of a money value to each is to be approved. The company is expected to keep such records as to adjust the revenue from internal switching and interchange switching upon the basis of the relative cost. The rental paid for the use of the land should be based upon its fair value. In 1915, when the length of main track was 1.24 miles and of yard track and siding 0.36 mile, the \$6,500 rental, capitalized at 6 per cent, amounted to a value of \$108,333 for the land alone.

The average operating expense per loaded car is shown by the annual reports to be 78 cents in 1915, 90 cents in 1914, and \$1.05 in 1913. The expense per loaded car for 1915 is not comparable with the expenso for prior years, since the internal movements were included in the number of cars only in 1915. It could not be taken as representative of the operating expenses of the interchange switching, while the figure for 1914 more than covers the operating expense for this class of service since, as we understand the method of counting the cars, the expense of the internal switching is included in the 90 cents. This makes no allowance for taxes, rental, or return upon investment. While we do not find in the record the basis for an

exact allocation of operating expenses and investment to the interchange switching, we are of the opinion and find that an allowance greater than \$1.50 per loaded car for interchange switching between industries or public team tracks and carriers connecting with the Indiana Northern or between connecting carriers is excessive. This, however, is to be regarded merely as the maximum allowance prescribed in the light of the limited information at our disposal. The carriers involved should carefully scrutinize all allowances accorded, and if necessary make changes to comply with the principles laid down in this and related cases. Shippers located on the line of the Indiana Northern should be accorded the same free time for loading or unloading cars, after placement upon industry spurs or team tracks, as is accorded shippers located on the trunk lines.

HARLAN, *Commissioner*, dissents.

87 I. C. C.

LORAIN & SOUTHERN RAILROAD COMPANY.

SECOND INDUSTRIAL RAILWAYS CASE.

No. 4181.

**IN THE MATTER OF ALLOWANCES TO SHORT LINES OF
RAILROAD SERVING INDUSTRIES.**

INVESTIGATION AND SUSPENSION DOCKET No. 414.

**CANCELLATION OF RATES IN CONNECTION WITH
SMALL LINES BY CARRIERS IN OFFICIAL CLASSIFI-
CATION TERRITORY.**

Decided December 23, 1915.

Upon consideration of all the circumstances of record, *Held*, That under its present rates and practices the Lake Shore & Michigan Southern Railway Company is giving to the Cleveland Stone Company and its traffic an undue and unreasonable preference and advantage and subjecting the Ohio Quarries Company and its traffic to an undue and unreasonable prejudice and disadvantage.

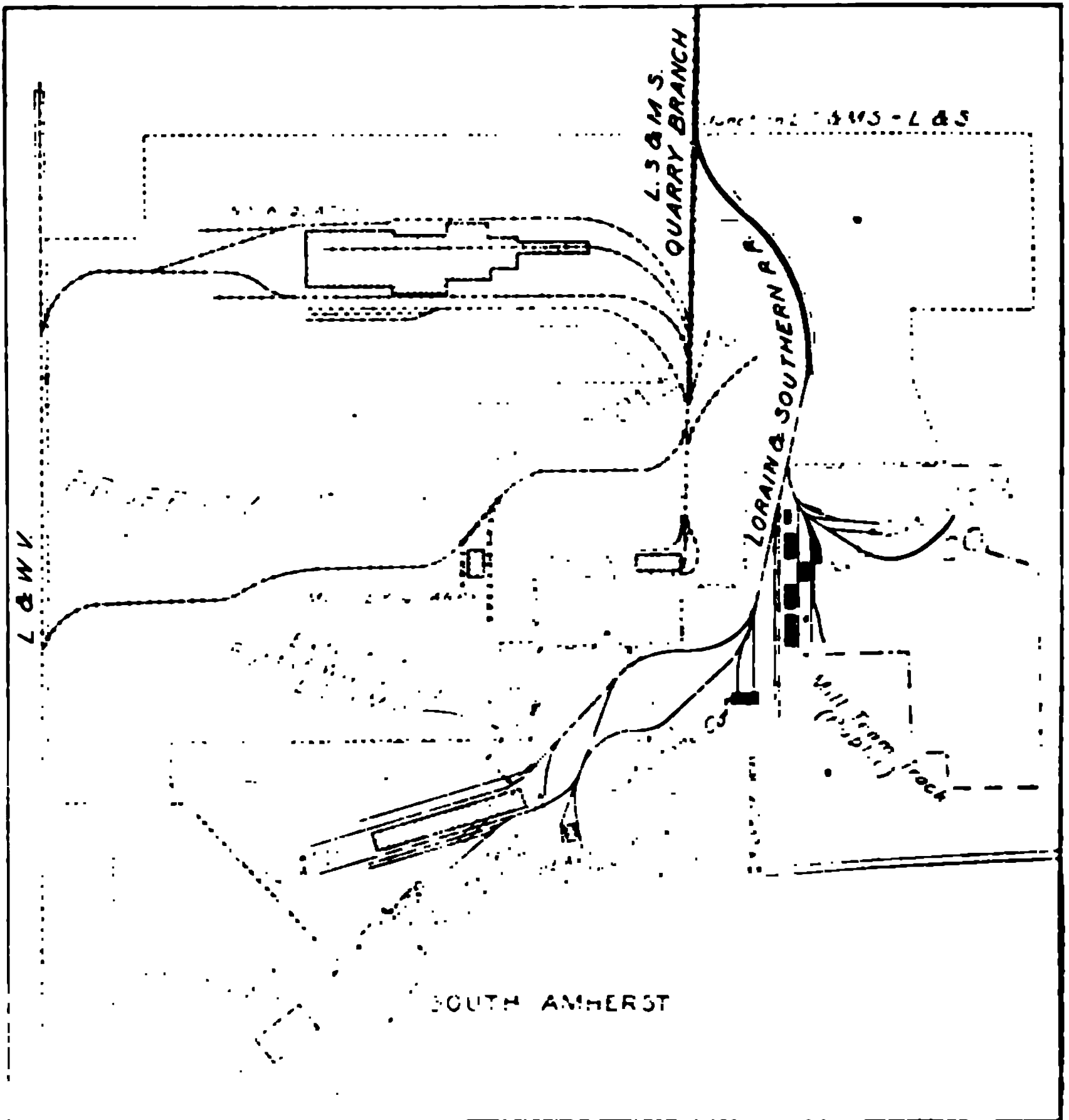
Same appearances as in original report.

SUPPLEMENTAL REPORT OF THE COMMISSION.

MEYER, Commissioner:

This supplemental report relates to the Lorain & Southern Railroad Company, one of the industrially owned lines involved in the original proceeding, 34 I. C. C., 596. Following the report of the Commission in the *Industrial Railways Case*, 29 I. C. C., 212, by tariff schedule filed to take effect April 1, 1914, the Lake Shore & Michigan Southern Railway Company, hereinafter referred to as the Lake Shore, canceled for interstate traffic a switching allowance of \$1 on carload shipments received from or delivered to the Lorain & Southern on which the Lake Shore received a road haul. By complaint filed March 15, 1914, the Lorain & Southern protested this cancellation, alleging that it subjected shippers on the line of the Lorain & Southern to undue and unreasonable prejudice and disadvantage. A finding that the Lorain & Southern is a common carrier is requested and the establishment of a reasonable allowance or division for the future

The Commission refused to suspend the tariff assailed, but filed the complaint in Docket No. 4181, subsequently consolidated with Investigation and Suspension Docket No. 414. Testimony was heard in the consolidated proceeding concerning any of the industrial lines which asked, in whatever form, that its case be considered by the Commission. At the hearing covering the operations of the Lorain & Southern no evidence was offered by the Lake Shore except by



way of cross-examination of witnesses for the industrial line. While the proceedings in Docket No. 4181 were dismissed without prejudice, the trunk line carriers were directed to reform their tariffs in accordance with certain recommendations of the Commission.

To understand clearly the situation here involved, it is necessary to state briefly the origin and history of the Lorain & Southern and describe its operations. Attached hereto is a map showing the location of the Lorain & Southern.

The Ohio Quarries Company owns and operates a quarry plant at South Amherst, Lorain County, Ohio, adjoining the extensive quarry property of the Cleveland Stone Company, a competitor, located on what is known as the quarry branch of the Lake Shore. The two industries will hereinafter be referred to, respectively, as the quarry company and the stone company. The quarry branch extends southward about 3 miles from a point on the main line of the Lake Shore about 1 mile west of Amherst, Ohio, also a main-line point, to the property of the stone company. It is testified that all of the spur tracks extending from the quarry branch into and through the plant of the stone company were constructed and are owned and maintained free of charge by the Lake Shore; moreover, that the Lake Shore, with its own power, performs all services incident to the hauling of cars to and from the quarries of the stone company.

Prior to its incorporation, the promoters of the quarry company secured options on the property it now owns and negotiated with the Lake Shore for transportation facilities. Upon agreement of the Lake Shore to build tracks into the property, the options were taken up, the quarry company organized, and the necessary machinery purchased. Subsequently, however, the Lake Shore refused to extend its tracks to the property of the quarry company, notwithstanding the fact that it owned a right of way extending southward from the end of the tracks of its quarry branch through a portion of the property of the quarry company. While the tracks which the Lake Shore formerly maintained over this right of way had been removed prior to the organization of the quarry company, the roadbed remained, and it appears that transportation facilities could readily have been afforded the quarry company by extending the rails of the quarry branch a very short distance over this roadbed. Confronted by the refusal of the Lake Shore, the quarry company, for the purpose of providing a means of outlet for its products, on April 25, 1903, incorporated the Lorain & Southern Railroad Company and constructed a track northward from its property to a point on the quarry branch of the Lake Shore, a distance of less than 1 mile. A part of its right of way was donated by the quarry company, a part purchased, and a portion, extending over the property of the Cleveland Stone Company, acquired by condemnation proceedings.

The entire capital stock of the Lorain & Southern, amounting to \$100,000, except directors' shares, is owned by the quarry company. There is no bonded indebtedness, but there is due the owner on notes \$24,372.92. The total cost of the right of way is stated to have been \$11,497.41. The investment value of the property on June 30, 1913, as shown by the general balance sheet, was \$91,154.17. The officers of the railroad and quarry company are practically identical.

The Lorain & Southern owns and operates 4.61 miles of track, of which 0.86 of a mile is designated as main track and 3.75 miles as sidetracks. The equipment consists of 1 engine, 12 flat cars, and 9 dump cars. It has no rail connection other than the Lake Shore. With the exception of the main track all of its rails are shifted from time to time to reach new openings, or are changed as desired by and at the expense of the quarry company. It conducts a freight business exclusively, and the principal service performed is the switching of cars between the quarry property and the junction point with the Lake Shore, known as Lake Shore Junction. An intraplant service also is performed in shifting cars about the quarry property, mainly between the quarries and mills and between the mills and the dump. A charge of \$500 per month formerly made for the intraplant service has been discontinued, and, at the time of the hearing, no charge was made against the industry, which, however, advanced money to the railroad from time to time as needed. For the year ended June 30, 1913, the industrial line switched 7,328 cars between the quarry company and Lake Shore Junction, and handled 3,745 cars in intraplant service. For the same year the total revenue amounted to \$7,490; operating expenses, \$12,753.31; operating deficit, \$5,263.31. For the year ended June 30, 1914, the operating deficit amounted to approximately \$10,000.

Approximately 97 per cent of the traffic handled by the Lorain & Southern is provided by the quarry company, and consists mainly of cut stone, curbing, flagging, and grindstones. The only other industry served by the industrial line is the Ohio Cut Stone Company, which buys its supply of rough stone from and is located on the property of the quarry company. Two public team tracks are maintained by the Lorain & Southern for the benefit of outside shippers, and these tracks are said to serve six coal and fertilizer dealers, and occasionally farmers. The single tariff published by the Lorain & Southern is a local freight tariff applicable to all commodities moving between Lake Shore Junction and South Amherst. A local bill of lading is issued by the Lorain & Southern and subsequently surrendered to the agent of the Lake Shore at the junction point. Cars are supplied by the connecting carrier under demurrage rules. The Lorain & Southern makes reports and keeps its accounts in accordance with the rules of the Commission.

When connection was made originally between the Lake Shore and the Lorain & Southern, the former road established a charge of \$1 per car for all movements over its quarry branch and the Lorain & Southern assessed a charge of \$1 per car for the service which it performed in switching cars between the quarry company and Lake Shore Junction. These charges placed the quarry company in the

position of having to pay \$2 per car in addition to the rate from Amherst, whereas the stone company had to pay only \$1 per car. To remedy this the Lake Shore waived its charge of \$1 and permitted the Lorain & Southern's charge of \$1 "to follow the car." In 1910 or shortly thereafter the Lake Shore discontinued the charge of \$1 over its quarry branch, and the through rate to Amherst was made to apply directly to the quarries of the stone company. Thereafter the Lake Shore continued its allowance of \$1 per car to the Lorain & Southern until April 1, 1914, when, as stated above, it was canceled. Following the discontinuance of its former allowance the Lorain & Southern increased its local charge to \$2.50 per car, which is the rate now in effect.

Analysis of the record discloses that the important question to be determined here is not whether the Lorain & Southern is a common carrier, or the character of the allowance which it formerly received from the Lake Shore. Whatever its legal status in that respect, we view it merely as one phase of the general investigation before us and as incidental to the broader and controlling question of whether or not the Lake Shore under its present rates and practices is giving to the stone company and its traffic an undue and unreasonable preference and advantage while subjecting the quarry company and its traffic to an undue and unreasonable prejudice and disadvantage in violation of the provisions of section 3 of the act.

Under the present practices of the Lake Shore, described above, the quarry company is forced to operate at a distinct disadvantage in comparison with the stone company, with which it is in direct competition, and the record shows no substantial dissimilarity in conditions at the two industries. Upon consideration of all the circumstances disclosed, we are of the opinion and find that under its present rates and practices the Lake Shore is giving to the stone company and its traffic an undue and unreasonable preference and advantage and subjecting the quarry company and its traffic to an undue and unreasonable prejudice and disadvantage, and from this discrimination an order will be entered requiring the Lake Shore to cease and desist.

The Lake Shore may remove the discrimination condemned by making reasonable allowances or divisions to the Lorain & Southern or by such other method as it may deem appropriate. So long as it is lawful, we are not concerned with the method which the Lake Shore may adopt to fulfill its obligation under the act. Should the Lake Shore prefer to avoid the discrimination by a utilization of the services and facilities of the Lorain & Southern, it is to be observed that, in accordance with our original report in this proceeding, *supra*, each railroad company will be required to file with the

Commission a full statement of the arrangements entered into, showing specifically the basis of rates to be applied from points on the Lorain & Southern and the basis of the allowances or divisions thereof granted under the agreement.

An appropriate order will be entered.

HARLAN, *Commissioner*, concurring:

Without determining whether the industrial railroad of the Ohio Quarries Company is or is not a common carrier, the Commission in its foregoing report finds that the Lake Shore, in serving the Cleveland Stone Company on "all of the spur tracks extending * * * into and through the plant of the stone company," and at the same time refusing to perform a similar service for the quarries company or to pay that company for doing the work itself, gives undue and unreasonable preference and advantage to the former and subjects the latter and its traffic to an undue and unreasonable prejudice and disadvantage. In this finding I concur, without, however, participating in or approving the suggestions made in the Commission's report as to the manner in which the discrimination may be removed. This phase of the question will be discussed in my separate report in the *Car Spotting Case*, 34 I. C. C., 609.

87 I. C. C.

No. 5014.
BROWNSVILLE COTTON OIL AND ICE COMPANY
v.
**CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY ET AL.**

PORTION OF FOURTH SECTION APPLICATION No. 1952.

Submitted May 17, 1915. Decided December 28, 1915.

- 1 Rates on cottonseed oil, meal, hulls, and cake from Brownsville, Tenn., to points east of the Mississippi River and on or north of the Ohio River, found unjustly discriminatory to the extent that they exceed the rates contemporaneously maintained from Memphis, Tenn.
- 2 Rates on compressed cotton linters from Brownsville to points east of the Mississippi River and on or north of the Ohio River, found unjustly discriminatory to the extent that they exceed by more than 10 cents per 100 pounds the rates contemporaneously maintained from Memphis.
3. Fourth section application denied as to cottonseed oil, meal, hulls, and cake, and granted in part as to cotton linters.
4. Reparation denied.

J. R. Walker and *R. N. Bond* for complainant.

N. W. Proctor and *E. D. Mohr* for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of cottonseed products at Brownsville, Tenn. By complaint, filed July 15, 1912, it alleges that the rates charged by defendants for the transportation of cottonseed products in carloads to points east of the Mississippi River and on or north of the Ohio River were unreasonable and unjustly discriminatory, in violation of sections 1, 2, 3, and 4 of the act. Reparation is asked.

Brownsville is a local point on the main line of the Louisville & Nashville Railroad, 56 miles northeast of Memphis, Tenn., and intermediate from Memphis to destinations farther north and east. Through commodity rates applied on cottonseed oil, meal, cake, and hulls from Brownsville to substantially all points of destination in the territory described were 3 cents per 100 pounds higher than the rates to the same points from Memphis; rates on cotton linters,

20 cents higher than the rates from Memphis. Complainant contends that Brownsville is entitled to the rates maintained from Memphis. Effective July 1, 1913, and August 15, 1913, the rates on cottonseed oil from Memphis were increased 1 cent per 100 pounds, so that now the rates on oil from Brownsville are only 2 cents higher than the rates from Memphis. Louisville & Nashville Railroad Fourth Section Application No. 1952 covering the adjustment was heard subsequently to the hearing herein and will be disposed of with the complaint. The Louisville & Nashville assumed the defense and is hereinafter called the defendant.

Typical rates from Memphis and Brownsville in effect prior to the effective date of the increased rates following *The Five Per Cent Case*, 31 I. C. C., 351. 32 I. C. C., 325, were as follows, rates stated in cents per 100 pounds:

	To Louis- ville, Ky.	To Cin- cinnati, Ohio.	To Phila- delphia, Pa.	To New York, N. Y.	To Syra- cuse, N. Y.
From Memphis:					
Cottonseed oil—					
Prior to July 1, 1913.....	14.0	17.0	29.0	31.0	35.0
Subsequent to July 1, 1913...	15.0	18.0	30.0	32.0	36.0
Cottonseed meal, cake, and hulls.....	10.0	13.0	24.5	26.5	32.5
Cotton linters, compressed.....		20.0	40.5	42.5	57.5
From Brownsville:					
Cottonseed oil.....	17.0	20.0	32.0	34.0	39.0
Cottonseed meal, cake, and hulls.....	13.0	15.0	27.5	29.5	35.5
Cotton linters, compressed.....		40.0	60.5	62.5	87.5

¹ Effective Aug. 15, 1913.
² Applies only on meal. Rate on cake and hulls, 16 cents.

It was stated at the fourth section hearing that the rates on linters from Brownsville to trunk line territory had been reduced, subsequently to the hearing of the complaint, to the basis of 10 cents over Memphis, and the Louisville & Nashville expressed willingness to establish the same relationship in rates to Ohio River crossings. But the tariffs on file disclose that rates on compressed linters from Brownsville 20 cents over Memphis are still in effect and that, effective August 11, 1913, and August 26, 1915, the Louisville & Nashville filed rates from Brownsville on "cotton linters and regins, uncompressed, privilege to carrier of compressing." which were identical with the rates on compressed linters until increased 5 per cent.

Complainant compares the rates from Brownsville with the rates from Memphis and from Covington, Ripley, and Dyersburg, Tenn., on the Illinois Central Railroad from 10 to 20 miles across country from Brownsville.

Memphis is a large railroad center, and transportation from Memphis involves the use of expensive terminal facilities and the absorption by the Louisville & Nashville, in numerous instances, of switching charges of \$2 per car imposed by connecting lines. There are

no terminal facilities at Brownsville and very limited switching service is required. There are mills that compete with complainant at Covington, Ripley, and Dyersburg. These points are substantially the same distance as Brownsville from Memphis and are served exclusively by the Illinois Central, which parallels the Louisville & Nashville from Memphis and which operates under substantially similar conditions. All three points have Memphis rates on cottonseed products to the north and east. The Illinois Central is not a party defendant. Complainant also competes with numerous cottonseed mills at Memphis that are able to ship their products to the north and east through Brownsville at rates lower than the rates available to complainant, and complainant is required to shrink its profits by the amount of the difference in rates in order to meet this competition. The shrinkage apparently is serious. Partly because of their favorable rates on outbound cottonseed products, moreover, complainant's competitors at Memphis are able to buy cotton seed in the producing territory contiguous to complainant's mill, to which territory complainant must look for a large part of its raw material.

Defendant contends that the Brownsville rates are not unreasonably high but unreasonably low, due to the location of Brownsville intermediate to Memphis. Exhibits are offered showing rates on cottonseed products from various southern milling points for hauls approximating the hauls from Brownsville to representative points in the north and east which indicate a somewhat higher level of rates from producing points in the south generally than from Brownsville.

Defendant admits discrimination against Brownsville in favor of Memphis, but contends that it is not unlawful, because competitive conditions obtain at Memphis which do not obtain at Brownsville. Railroad competition and potential water competition on the Mississippi River are said to compel the present rates from Memphis. Brownsville is not on the river and is served exclusively by defendant. A boat line is now in operation between various points on the Mississippi River, including Memphis, and between Memphis and Ohio River points. But complainant contends that the rates from Memphis could be increased materially without causing the articles involved to move by water, and cites the 2-cent increase effected in the rates on cottonseed oil in 1908, together with higher rates formerly in effect when there was actual water competition. Complainant also denies that there is any real carrier competition at Memphis, for the reason that when increases or reductions in rates are made from Memphis they take effect simultaneously on all lines under tariffs filed by a joint agent of the various carriers serving Memphis.

The increase effected in the rates on cottonseed oil from Memphis in 1908 was part of a general increase in such rates in the south, and the rate from Brownsville was increased 2 cents at the same time. Complainant intervened in *Memphis Cotton Oil Company v. I. C. R. R. Co.*, 17 I. C. C., 313, which involved these increased rates, but no testimony was taken and no finding made relative to the rates. We said:

The fact that has most impressed us upon a study of this record is that Memphis has always enjoyed an advantage in respect to its rates on the commodity here involved. This advantage it could properly have so long as the rail rates were actually affected by active or strongly potential competition by water lines. There was no reason, however, why it should have continued to have this advantage after 1894, when water competition ceased and was no longer an appreciable factor in the oil traffic. It has, nevertheless, continued on a better rate basis than any other point in the territory involved in the rate advance of October 1, 1908.

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It is nevertheless true that Memphis enjoys more favorable rates than the other mill points that have been mentioned; and, without intending to be understood as justifying the advance of 2 cents made in the cottonseed oil rates from this territory on October 1, 1908, as applied to other milling points, we are forced to the conclusion that, so far as the advance affects Memphis, it produces no result of which it may justly complain.

Potential water competition does exist at Memphis on all commodities, but that competition is not at all probable for the commodities involved, except perhaps for linters.

We find that the rates assailed are not unreasonable but that the rates from Brownsville on compressed cotton linters are unjustly discriminatory to the extent that they exceed by more than 10 cents per 100 pounds the rates concurrently maintained on like traffic from Memphis and that the rates from Brownsville on cottonseed oil, meal, cake, and hulls are unjustly discriminatory to the extent that they exceed the rates concurrently maintained on like traffic from Memphis.

In respect of the claim for reparation, the rate relationship herein condemned in part was not the sole cause of complainant's disadvantage, a substantial part of which is attributable to the lower rates accorded to Dyersburg, Covington, and Ripley by the Illinois Central, for which defendant is not responsible. Reparation is denied. That portion of the Louisville & Nashville's Fourth Section Application No. 1952 involved which relates to rates on cottonseed oil, meal, hulls, and cake will be denied, but that portion which relates to rates on cotton linters will be granted to the extent herein indicated.

An order will be entered accordingly.

No. 5937.

W. P. BROWN & SONS LUMBER COMPANY ET AL.

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Submitted December 13, 1913. Decided December 28, 1915.

Defendant's rates for the transportation of hardwood lumber and logs in carloads from points in Alabama, Tennessee, and Kentucky to Louisville, Ky., Evansville, Ind., and Cincinnati, Ohio, not found to be unreasonable or otherwise in conflict with the act. Complaint dismissed.

J. R. Walker for complainants.

N. W. Proctor for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are engaged in the lumber business, with headquarters at Louisville, Ky. By complaint, filed July 12, 1913, they allege that defendant's tariff issued May 1, 1913, to take effect May 8, 1913, naming increased rates on hardwood lumber and logs from points on its line in Alabama, Tennessee, and Kentucky, on and north of the Tennessee River, to Louisville, Ky., Evansville, Ind., and Cincinnati, Ohio, is illegal and in violation of section 6 of the act to regulate commerce; also, that the increased rates named are unreasonable, and subject complainants to undue prejudice and disadvantage. Reparation is asked on shipments moved subsequently to May 8, 1913, on the basis of rates in effect prior to that time, which rates are also asked for the future. Maley & Wertz, Young & Cutsinger, and Fullerton Powell Hardwood Lumber Company filed a petition to intervene at the hearing.

Defendant long maintained lower rates on lumber and logs to Louisville, Evansville, and Cincinnati from southern points, including points here involved, than to intermediate points. The adjustment was protected by defendant's Fourth Section Application No. 1952, which was decided with similar applications by other lines in *Fourth Section Applications 542 et seq.*, 25 I. C. C., 50. The record in that case was stipulated into the record in this case. We held in that case that the carriers' applications for authority to charge lower rates on lumber from the south to Ohio River cross-

ings than to intermediate points should be granted for some traffic and denied for other traffic. No order was issued immediately, but we suggested that the carriers file statements of rates which they desired to continue. Defendant herein filed no statement relative to rates on lumber and logs from points on its line on or north of the Tennessee River, and revised its rates from those points to all points north, including Louisville, Evansville, and Cincinnati, to conform to the rules of the fourth section. The revised rates were published in defendant's tariff I. C. C. No. A-12751, filed May 2, 1913, to take effect May 8, 1913, upon six days' notice.

Our report in *Fourth Section Applications 542 et seq., supra*, was cited as authority for the establishment of the rates on less than 30 days' notice. The tariff named 149,742 rates, 76,939 of which effected reductions, 10,345 increases; the remaining rates were not changed. About 40,000 of the reduced rates are said to have represented reductions in rates on walnut, cherry, and cedar lumber to the bases of the rates on other lumber, although the movement of walnut, cherry, and cedar is light. The balance of the reduced rates consisted, in large part at least, of rates to points intermediate to Ohio River crossings, to which the volume of traffic can not compare with the traffic to the crossings. Complainants accordingly argue that as a practical matter no reductions were effected and that defendant's revenue under the present adjustment in effect will be greatly increased on traffic destined to and beyond Ohio River crossings and only slightly decreased on traffic to intermediate points.

The propriety of filing the tariff named on less than statutory notice was questioned by us when it was filed. Correspondence with defendant developed that defendant construed our report in *Fourth Section Applications 542 et seq., supra*, to require prompt revision of the rates there involved that should not be submitted to us with a detailed statement of the exact relief to which the carrier submitting the statement considered itself entitled under the terms of our report and that defendant coupled this construction with rule 14 (f) of our Tariff Circular No. 18-A, as follows:

Rates prescribed by the Commission in its decisions and orders after hearings upon formal complaints shall, in every instance, be promulgated by the carriers against which such orders are entered in duly published, filed, and posted tariffs, or supplements to tariffs, and notice shall be sent to the Commission that its order in case No. —, has been complied with in item —, page —, of — tariff, I. C. C. No. —, or supplement — to — tariff, I. C. C. No. —.

* * * * *

Unless otherwise specified in the order in the case, such tariff or supplement may be made effective upon *five days' notice to the Commission and to the*

public, and if made effective on less than statutory notice, either under this rule or under special authority granted in the order in the case, shall bear on its title-page notation "in compliance with order of Interstate Commerce Commission in case No. —."

Defendant subsequently was advised by letter that our report in the case cited was accompanied by no order authorizing the establishment of rates on less than the statutory notice of 30 days, but that the tariff in controversy would not be rejected.

Section 6 of the act to regulate commerce provides in part as follows:

No change shall be made in the rates, fares, and charges or joint rates, fares, and charges which have been filed and published by any common carrier in compliance with the requirements of this section, except after 30 days' notice to the Commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection: *Provided, That the Commission may, in its discretion and for good cause shown, allow changes upon less than the notice herein specified, or modify the requirements of this section in respect to publishing, posting, and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions*

* * * * *

The Commission may reject and refuse to file any schedule that is tendered for filing which does not provide and give lawful notice of its effective date, and any schedule so rejected by the Commission shall be void and its use shall be unlawful.

Rule 14 (f), as in force at the time, was not wholly free from an ambiguity which lends some color to defendant's contention that the five-day provision might be construed, when read in connection with the entire rule, as authorizing the filing of this tariff upon five days' notice. But no prior express authority for the establishment of the rates on less than statutory notice, other than that which might be gleaned from such a construction of the rule, having been given, the tariff would have been rejected had it not been tendered in pursuance of the expressed views of the Commission in a general investigation, in which certain propositions were affirmed in the decision. The bases upon which such revised rates were to be established were determined, but necessarily the Commission felt it "incumbent upon the carriers to point out in detail the exact relief for which they ask." The Commission, and the public through the report of the Commission, had notice that these revised rates must be filed responsively to those expressed views, and therefore, while technically the tariff should have been rejected upon tender, it was allowed to become effective May 8, 1913.

The rule in question has since been amended so as to provide that, unless otherwise specified in the order in the case, a tariff must be made effective upon statutory notice.

The following table shows rates on lumber and logs in carloads to Louisville from Decatur and certain points north of Decatur, selected as typical of the general situation in effect prior to May 8, 1913, together with the rates established May 8, 1913:

Rates in cents per 100 pounds on lumber and logs.

From—	To Louisville, Ky			
	Distance.	Former rate.		Present rate—all kinds, except as noted.
		Walnut, cherry, and cedar, except as noted.	Other than walnut, cherry, and cedar.	
	Miles.	Cents.	Cents.	Cents.
Columbia, Tenn.....	232	14	11	12
Pulaski, Tenn.....	245	16	13	14
Lawrenceburg, Tenn.....	249	16	13	14
Gibson, Tenn.....	250	14	10	12
Athens, Ala.....	294	17	14	15
Jacksonburg, Ala.....	304	17	14	15
Decatur, Ala.....	308	17	13	15
Brownsville, Tenn.....	320	14	10	12
Mason, Tenn.....	341	14	11	12

¹ Walnut and cherry only

² Walnut, cherry, and cedar, 17 cents.

Defendant asserts that the rates which complainants seek to have reestablished to the Ohio River cities were unreasonably low and that they were established originally because they were deemed necessary to meet competition at Ohio River cities and to enable owners of timber along its line to market their lumber in those cities and in the north and east; also that they were not fixed with any idea of establishing rates that were reasonable *per se*, but only to meet competition and to permit the free movement of the traffic. It was pointed out that in *Fourth Section Applications 542 et seq., supra*, we did not find the rates to the Ohio River cities to be reasonable. The increased rates assailed are said to be just and reasonable, and sufficiently low to meet present competition at the Ohio River cities, and to have been established to offset the numerous reductions required in defendant's lumber rates for compliance with our opinion in *Fourth Section Applications 542 et seq., supra*. Defendant insists that the primary purpose of the revision effected was not to increase its total revenue, but in a measure to preserve its previous revenue. The reductions in the rates to intermediate points are shown to range from 1 cent to 9 cents per 100 pounds, while the maximum increase to Ohio River cities was 2 cents per 100 pounds. In many instances

the rates to Ohio River cities on walnut, cherry, and cedar were reduced. The revised adjustment also included the voluntary elimination of various inconsistencies and discrepancies in defendant's rates on lumber that had crept in. Some increases were effected in relatively low competitive rates where existing conditions permitted. A uniformly reasonable readjustment was attempted.

Defendant presented various statements showing rates charged by other carriers for the transportation of lumber for similar distances. Complainant also introduced statements showing rates charged for the transportation of lumber from and to various points. Careful analysis of these statements convinces us that the increased rates assailed are not unreasonable.

Complainants ship lumber into central freight association territory in competition with lumber dealers at St. Louis, Mo., who get their lumber from the southwest. In *Northbound Rates on Hardwood*, 32 I. C. C., 521, and 34 I. C. C., 708, we found that the carriers had justified an increase of 2 cents per 100 pounds on hardwood lumber from various points in the southwest to St. Louis. As previously stated, the maximum increase effected to Ohio River cities from the points of origin here involved was 2 cents per 100 pounds.

We find upon the facts disclosed that the rates assailed were not unlawfully established and that they are not unreasonable or otherwise in conflict with the act. The complaint accordingly will be dismissed.

37 I. C. C.

No. 6047.
DRAKE MARBLE & TILE COMPANY
v.
NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted February 3, 1914. Decided December 28, 1915.

1. Reparation awarded on account of unreasonable charges collected for the transportation of a mixed carload of polished building marble and crushed marble from St. Paul, Minn., to Bismarck, N. Dak.
2. Rates and ratings on polished building marble and dressed building marble in carloads from St. Paul, Minn., to points in Minnesota, North Dakota, and South Dakota, found unjustly discriminatory to the extent that they exceed the rates and ratings on polished building stone and dressed building stone in carloads respectively.
3. Charges for the transportation of building marble, building stone, and crushed marble in mixed carloads from St. Paul, Minn., to points in Minnesota, North Dakota, and South Dakota, found unreasonable to the extent that they exceed the charges that would accrue on the basis of the highest carload rate and highest minimum weight applicable to any article in the mixture.
4. Charges established by defendants for the transportation of mixed carloads of building marble, crushed marble, and cement from St. Paul, Minn., to points in Minnesota and North and South Dakota, found to be unreasonable to the extent that they exceed the charges that would accrue upon the basis of the highest carload rate and highest minimum weight applicable to any article in the shipment.

Lightner & Young for complainant.

Kenneth Taylor and *A. H. Lossow* for Minneapolis, St. Paul & Sault Sainte Marie Railway Company.

P. H. Burnham and *J. F. Finerty, jr.*, for Great Northern Railway Company.

W. A. Cleland and *Charles Donnelly* for Northern Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of interior stone, marble, and tile work used in the construction of buildings, with its principal place of business at St. Paul, Minn. By complaint, filed August 21, 1913, it alleges (1) that the class C rating and rates applied by defendants on dressed building marble and polished building marble in carloads and on mixed carloads of building marble

and crushed marble, minimum 36,000 pounds, from St. Paul to points in Minnesota and North and South Dakota, are unreasonable and unjustly discriminatory to the extent they exceed the class D rating and rates subject to a minimum of 30,000 pounds; (2) that the suggested rating and rates would be reasonable for dressed building stone and polished building stone; (3) that the western classification, which governs shipments from St. Paul to the destinations involved, should contain a reasonable rating for mixed carloads of all building stone, building marble, and the necessary amount of cement for the erection thereof. Reparation is asked on certain shipments that moved during the period from September, 1911, to July, 1913, and the establishment of reasonable rates for the future.

Complainant usually ships marble and stone in slabs about 1 inch thick, sawed by complainant from rough marble at St. Paul. The slabs are used in the construction of interior walls and floors. The crushed marble shipped by complainant is known to the trade as granito, and is used with cement in the construction of terazzo floors. The following table shows the dates of movement of the shipments set forth in the complaint, the points of destination, the weights, the rates charged, the charges collected, the routes, and the class D rates concurrently in effect:

[Rates stated in cents per 100 pounds.]

The shipment to Chisholm, Minn., moved through Superior, Wis. The shipment of August 5, 1912, consisted of 19,400 pounds of polished building marble and 14,000 pounds of crushed marble; the shipment of April 18, 1913, of polished marble. Charges were properly collected on the basis of the fourth-class rates applicable to these commodities, in less than carloads. The shipments of October 14, 1911, December 9, 1911, and July 20, 1913, consisted of dressed building marble and polished building marble. The western classification did not provide specifically for polished or dressed "building" marble or polished or dressed "building" stone, so that the class C rating provided for dressed or polished marble in carloads, minimum 36,000 pounds, applied to dressed or polished "building" marble,

and the class E rating provided for dressed stone in carloads, minimum 36,000 pounds, to dressed or polished "building" stone. Charges were properly collected at the class C rates, minimum 36,000 pounds. The remaining shipments consisted either of mixed carloads of polished building marble and crushed marble or of dressed building marble and crushed marble. Charges were collected on the basis of the class C rate. No rates were provided for mixed carloads of polished marble and crushed marble, and the charges on these shipments should have been based on the fourth-class rates applicable to less-than-carload shipments of these commodities. On this basis the charges in each instance would have exceeded those actually collected.

Although complainant alleges that the class C rates applicable to dressed building marble and polished building marble were unreasonable as well as unjustly discriminatory, its evidence tends mainly to prove that these materials compete in interior building construction with dressed building stone and polished building stone; that both marble and the stone with which it competes are limestone and that while the average value of building marble is greater than the average value of building limestone, there is not enough difference in value to justify different ratings or rates. Various samples of marble and of stone that competes with it for building purposes are submitted. The following table shows the values of these samples stated by complainant, values stated in cents per slab, dressed and polished, 12 inches by 12 inches by seven-eighths of an inch:

	Dressed.	Polished.		Dressed.	Polished.
Tennessee marble.....	30	50	Carthage stone.....	20	40
Verde marble.....	60	75	Bedford stone.....	20	30
Hauteville marble.....	60	90	Mankato stone.....	20	40
Italian marble.....	50	65	St. Paul limestone.....	20	40
Sienna marble.....	75	100	Pink Kasota stone.....	20	40
Vermont marble.....	25	45			

Apparently the elements of bulk, space, weight, expense of carriage, risk, character of the article, and competition considered in the classification of dressed marble and dressed stone, and polished marble and polished stone, respectively, are identical. Although building stone appears to move in somewhat greater volume than marble and the average value of marble is somewhat greater than that of stone, the chairman of the Western Classification Committee admits on behalf of defendants that some of the polished building stone offered in evidence so much resembles polished building marble that it is difficult to distinguish them and that they should be accorded the same rating. Different ratings are urged for dressed building marble and dressed building stone for the reason that the average value of dressed building marble greatly exceeds the average value of dressed building stone. But it does not appear that the difference

between the average values of dressed building marble and dressed building stone is greater than the difference between the average values of polished building marble and polished building stone. The official classification rates both polished marble and polished stone, rule 26, less than carloads, fifth class, carloads. The western classification rates both of these commodities fourth class in less than carloads; polished marble in carloads, class C; polished stone in carloads, class E; the western classification ratings being lower in both instances than the official classification ratings. The chairman of the Western Classification Committee also admits on behalf of the defendants that mixed carloads of building marble, building stone, and crushed marble should be accorded the rating applicable to the article in the mixture taking the highest carload rate and the highest minimum weight.

The western classification rates building cement in carloads, class C, minimum 40,000 pounds, and in less than carloads, fourth class. There is no provision for mixed carloads of building marble, building stone, and cement from and to the points of origin and destination involved. As stated before, building cement is used in interior building construction and in accordance with the views of the Commission relative to the liberalization of mixtures, announced in *Western Classification No. 51*, 25 I. C. C., 442, building marble, building stone, crushed marble, and cement, in mixed carloads, apparently should be accorded the rate applicable to the article in the mixture taking the highest carload rate and highest minimum weight. A supplement to the current western classification filed August 25, 1915, subsequently to the hearing herein, to take effect October 15, 1915, rated polished marble and stone in blocks, pieces, or slabs, in carloads, class C, minimum 36,000 pounds, and dressed marble and stone, in blocks, pieces, or slabs, in carloads, class D, minimum 36,000 pounds, which ratings were applicable to polished building marble and stone, and dressed building marble and stone, respectively. The same supplement also provided that mixed carloads of two or more kinds of blocks, pieces, or slabs, of stone and marble, would be taken at the highest rating provided for carload quantities of any article in the shipment subject to a minimum of 36,000 pounds. This provision applied to mixed carloads of polished and dressed marble and crushed marble. The items proposing these provisions, with the exception of that providing for mixed carloads of stone and marble, were suspended by the Commission pending a hearing relative to the propriety of certain schedules contained therein, Investigation and Suspension Docket No. 727, not yet decided.

Upon all of the facts of record we find that the charges applicable to complainant's mixed shipments of building marble and crushed

marble were unreasonable to the extent that they exceeded the charges that would have accrued on the basis of the highest carload rate and highest minimum weight applicable to any of the articles in the mixture, and that reasonable charges for the transportation of mixed carloads of two or more kinds of the following commodities, polished building stone, polished building marble, dressed building stone, dressed building marble, crushed marble, and cement, from and to the points of origin and destination involved, should not exceed the charges based on the highest carload rate and highest minimum weight applicable to any article in the shipment.

Charges assessed on this basis on the shipment of August 5, 1912, from St. Paul to Bismarck, would have aggregated \$108, or \$62.34 less than the charges actually collected at a carload rate of 30 cents per 100 pounds provided for polished marble and a minimum weight of 36,000 pounds applicable to both polished marble and crushed marble. Charges on this basis on the other mixed shipments involved would have been the same in amount as the charges actually collected. We further find that complainant made the shipment of polished building marble and crushed building marble from St. Paul to Bismarck on August 5, 1912, as described, and paid and bore charges thereon herein found to have been unreasonable; that complainant has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable, and that it is entitled to reparation from the Northern Pacific Railway Company in the sum of \$62.34, with interest from September 4, 1912.

No evidence was adduced that would warrant a finding that the rates charged on complainant's shipments of polished marble and dressed marble in carloads were unreasonable. We do find, however, that for the future any rates or ratings charged by defendants for the transportation of polished building marble and dressed building marble in carloads from and to the points of origin and destination involved in excess of those contemporaneously applicable to shipments of polished building stone and dressed building stone in carloads, respectively, will be unjustly discriminatory. Building marble and building stone generally load in excess of 36,000 pounds, and the facts disclosed do not warrant requiring any change in the minimum of 36,000 pounds.

An order will be entered awarding the amount of reparation herein found due complainant, and to give effect to our conclusions relative to reasonable rates for the transportation of mixed carloads of polished building marble and stone, crushed marble, and cement. No order will be issued respecting our other conclusions reached herein, pending a hearing in Investigation and Suspension Docket No. 727.

No. 5985.

DRAKE MARBLE & TILE COMPANY
v.
GREAT NORTHERN RAILWAY COMPANY.

Submitted December 18, 1913. Decided December 28, 1915.

Charges applicable over defendant's line for the transportation of a mixed carload of dressed building marble and crushed marble from St. Paul, Minn., to Bellingham, Wash., found to have been unreasonable. Defendant's rates for the transportation of dressed building marble and polished building marble from St. Paul, Minn., to Bellingham, Wash., found to have been unjustly discriminatory.

Lightner & Young for complainant.

J. F. Finerty, jr., for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the marble and stone business at St. Paul, Minn. By complaint, filed July 26, 1913, as amended, it assails as unreasonable and unjustly discriminatory the rates charged by defendant for the transportation of three carloads of polished and dressed building marble and a carload of dressed building marble and crushed marble from St. Paul to Bellingham, Wash. Reparation is asked and the establishment of reasonable rates.

The shipments moved during the period from August, 1912, to October, 1913. The three carloads of polished building marble and dressed marble aggregated 95,300 pounds. The mixed carload of dressed building marble and crushed marble weighed 51,860 pounds. Total charges were collected in the sum of \$1,471.60 at a commodity rate of \$1 per 100 pounds, minimum 30,000 pounds, provided for the transportation of polished marble and dressed marble.

Shipments from St. Paul to Bellingham are governed by the western classification. No specific carload rate was provided for the transportation of mixed carloads of dressed marble and crushed marble and the fourth-class rate of \$1.83 per 100 pounds, provided for the transportation of these commodities in less than carloads, was applicable. There is, therefore, an undercharge on the mixed carload of dressed building marble and crushed marble of \$430.44. Complainant insists that at the time this shipment moved there was

a combination rate on mixed carloads of dressed marble and crushed marble from St. Paul to Bellingham of 66 cents per 100 pounds, composed of a rate of 34 cents from St. Paul to Havre, Mont., "on stone or marble, rough, sawed, or cut to dimension; dressed (not polished, lettered, or figured)"; and a rate of 32 cents on "stone, including marble and granite, rough, quarried, chiseled, or ground (not lettered or polished)," from Havre to Bellingham, but this rate was not available for the reason the 34-cent component did not apply on crushed marble. Defendant states that the components of the combination rate were published by mistake, and it appears that they have since been canceled.

Complainant contends that the charges assailed were unreasonable and unjustly discriminatory to the extent that the charges collected on the shipment of dressed marble and crushed marble exceeded the charges that would have accrued at a rate of 50 cents per 100 pounds applicable to stone, rough, hammered, chiseled, or cut to dimensions and to the extent that the charges collected on the shipments of polished marble and dressed marble exceeded the charges that would have accrued at a rate of 75 cents per 100 pounds, applicable to interior wood finish in carloads, which commodity, complainant states, competes with polished marble and polished stone in the construction of buildings. The rate applicable to polished stone in carloads was the class E rate of 85 cents per 100 pounds. No evidence was offered by complainant tending to show to what extent interior wood finish competes with polished marble or stone, or in fact that there are shipments of that commodity from St. Paul to Bellingham. Complainant also argues that if 50 cents is determined to be a reasonable rate on dressed stone and marble, polished stone and marble should take a rate not exceeding 60 cents. Complainant states that polished marble competes with polished stone and dressed marble with dressed stone in the construction of buildings; that marble and the stone used for this purpose are both limestone, and that although the average value of building marble is greater than the average value of building stone, the difference is not great enough to warrant a difference in rate.

In *Drake Marble & Tile Co. v. N. P. Ry. Co.*, 37 I. C. C., 512, which involved rates on building marble and stone from St. Paul to western points, we found that the maintenance of rates on polished building marble in carloads in excess of those concurrently applicable to polished building stone and of rates on dressed building marble in carloads in excess of those concurrently applicable to dressed building stone were unjustly discriminatory and that charges on mixed carloads of building marble and mixed carloads of building marble and crushed marble should not exceed the charges as-

assessable at the rates applicable to the article included in the mixture taking the highest carload rate and highest minimum weight.

The charges actually collected on the mixed carload of dressed marble and crushed marble were based on the rate applicable to the article in mixture taking the highest carload rate and highest minimum weight, as the carload rate on crushed marble was the class E rate of 85 cents per 100 pounds, minimum 36,000 pounds, and the carload rate on dressed marble was \$1 per 100 pounds, minimum 30,000 pounds.

The western classification rates polished marble and dressed marble class C in carloads and polished stone and dressed stone class E in carloads. A supplement to the current western classification filed August 25, 1915, to take effect October 15, 1915, rated polished building marble and dressed building marble in carloads the same, respectively, as polished building stone and dressed building stone in carloads, minimum 36,000 pounds, and provided that charges on mixed carloads of polished marble and dressed marble and mixed carloads of building marble and crushed marble would be based on the highest rating provided for carload quantities of any article in the shipment, minimum 36,000 pounds. The items in the supplement containing these proposed charges, with the exception of that providing for mixed carloads of stone and marble, were suspended by the Commission pending a hearing relative to the propriety of certain schedules contained therein. Investigation and Suspension Docket No. 727, not yet decided.

Upon all of the facts of record we find that the charges applicable to complainant's shipment of dressed building marble and crushed marble were unreasonable to the extent that they exceeded the charges that would have accrued on the basis of the highest carload rate and highest minimum weight applicable to any article in the mixture. The charges actually collected on this shipment were assessed on the basis herein found reasonable, and defendant is authorized to waive the undercharges previously mentioned.

No evidence was adduced by complainant that would warrant a finding that the rates charged on the shipments of polished and dressed building marble were unreasonable, but upon the record and following the conclusions reached in *Drake Marble & Tile Co. v. N. P. Ry. Co.*, *supra*, we find that for the future any rates charged by defendant for the transportation of polished building marble and dressed building marble in carloads from St. Paul, Minn., to Bellingham, Wash., in excess of those contemporaneously applied to polished building stone and dressed building stone in carloads, respectively, from St. Paul, Minn., to Bellingham, Wash., will be unjustly discriminatory, and that the charges for the transportation of mixed

carloads of dressed building marble and crushed marble should not exceed the charges concurrently assessable on the basis of the carload rate and minimum applicable to any article in the mixture taking the highest carload rating and the highest minimum weight.

An order will be entered respecting our conclusions relative to charges for the future on mixed carloads of dressed building marble and crushed marble. No order will be issued respecting our other conclusions reached herein pending a hearing in Investigation and Suspension Docket No. 727.

No. 6476.

MCLEAN LUMBER COMPANY

v.

ALABAMA, TENNESSEE & NORTHERN RAILWAY ET AL

Submitted September 11, 1914. Decided December 28, 1915.

Rate of 16 cents per 100 pounds charged for the transportation of logs in carloads from Boyd, Ala., to Chattanooga, Tenn., found to have been unreasonable to the extent that it exceeded 13.5 cents per 100 pounds. Reparation awarded.

O. L. Bunn for complainant.

M. Carter Hall for Alabama Great Southern Railroad Company.

Russell Houston for Alabama, Tennessee & Northern Railway.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business at Chattanooga, Tenn. By complaint filed December 22, 1913, it alleges that the charges collected by defendants for the transportation of 17 carloads of logs from Boyd, Ala., to Chattanooga, in October and November, 1913, were unreasonable and unjustly discriminatory. Reparation is asked.

The shipments aggregated 772,700 pounds and moved over the Alabama, Tennessee & Northern Railway from Boyd to York, Ala., and over the Alabama Great Southern Railroad to destination. No joint through rate was in effect and charges were collected in the sum of \$1,234.40 at a combination rate of 16 cents per 100 pounds,

5 cents to York, and 11 cents beyond. Complainant paid and bore the charges. The rate to York is not assailed. Complainant contends that the rate applied over the Alabama Great Southern Railroad, hereinafter called defendant, from York to Chattanooga was unlawful and unreasonable to the extent that it exceeded 7.5 cents per 100 pounds.

Chattanooga is 268 miles from York. Prior to May 10, 1913, defendant published a mileage scale of commodity rates on logs between points on its line, applicable only when no specific rates were provided. The rate for distances of 275 miles and over 250 miles was \$30 per car, minimum weight 40,000 pounds, excess weight in proportion, equivalent to 7.5 cents per 100 pounds. Effective May 10, 1913, defendant sought to increase among other rates the rate for distances from 260 miles to 270 miles to 11 cents per 100 pounds. The operation of this supplement, however, was suspended until March 6, 1914, and later the effective date was voluntarily postponed by defendant until June 4, 1914. The shipments involved moved during the period of suspension, but prior to and during the period of suspension agent Hinton's tariff, concurred in by defendant, named a specific commodity rate of 11 cents per 100 pounds on this traffic from York to Chattanooga and the rate charged therefore was lawfully applied.

The parties submitted the case on the record made in *Chattanooga Log Rates*, 30 I. C. C., 36, which was pending before the Commission on rehearing. That case involved the reasonableness of the proposed increases in the rates on logs on defendant's line, above described. At the hearing in that case defendant offered a scale of distance rates somewhat lower than those suspended but higher than those in effect by reason of the suspension. A rate of 8.5 cents per 100 pounds was proposed for distances from 260 miles to 270 miles. The scale of rates offered was approved and ordered to be maintained for the future. Effective May 22, 1914, defendant complied with the order, simultaneously canceling the specific commodity rate on logs from York to Chattanooga previously described, thereby making the rate on this traffic for distances from 260 miles to 270 miles 8.5 cents per 100 pounds. Upon the rehearing in that case, 35 I. C. C., 163, we found defendant's rate unreasonable for certain distances but did not disturb the rate of 8.5 cents for the distances mentioned. Following the conclusions in that case we find upon the record before us that the rate charged upon the shipments involved was unreasonable to the extent that the component from York to Chattanooga exceeded 8.5 cents per 100 pounds.

We further find that complainant made the shipments described in accordance with the foregoing statement of facts and paid and bore

charges thereon at the rate herein found unreasonable; that it has been damaged to the extent that the charges paid exceeded the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation with interest. As the exact amount of reparation due can not be determined upon the present record, complainant should prepare a statement showing as to each shipment on which reparation is claimed the date of shipment, points of origin and destination, route, weight, car number and initials, rate applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainant and verified by defendants, we will consider further issuing an order awarding reparation.

In view of our order in the *Chattanooga Log Rates case, supra*, no order for the future is necessary.

37 I. C. C.

No. 6678.
CHAS. W. DAVIS
v.
MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY
COMPANY.

Submitted August 21, 1914. Decided December 28, 1915.

Rates charged for the transportation from Manistique, Mich., to Gladstone, Mich., of shipments of hard and soft coal, in carloads, originating in Pennsylvania and West Virginia, found to have been unreasonable to the extent that they exceeded rates of 75 and 50 cents per net ton, respectively. Rates of 75 cents on hard coal and 50 cents on soft coal prescribed as maxima for the future. Reparation awarded.

T. J. Riley for complainant.

A. H. Lossow for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a dealer in lumber and coal at Gladstone, Mich. By complaint, filed February 28, 1914, he alleges that the rates charged by defendant for the transportation of 31 carloads of hard and soft coal from Manistique, Mich., to Gladstone, Mich., were unreasonable. Reparation is asked and the establishment of reasonable rates for the future. Complainant secures most of his coal from West Virginia and attacks the rates from Manistique to Gladstone as factors in the through rates charged.

The rates assailed are \$1.10 per ton on hard coal and 90 cents per ton on soft coal. For more than 20 years prior to September 20, 1910, the rate on soft coal had been 50 cents. On that date it was increased to \$1.10, with a reduction to 90 cents the following month. Both parties were under the impression that the rate on hard coal had been 75 cents prior to September 20, 1910, but the tariffs show that both before and after that date a mileage rate of \$1.10 obtained. The record shows certain undercharges and overcharges.

Defendant shows that the increase in the soft-coal rate was part of a general readjustment of local rates on coal effected by defendant in 1910, because it was said that soft coal was not bearing its proper share of the transportation burden. Other rates in the same general territory were cited, especially a rate of 65 cents per ton from Lake

Michigan ports to the Fox River mills, an average distance of 81 miles. It appears, however, that the ton-mile revenue from this rate is only 1 cent, as compared with nearly 2 cents per ton-mile earned by the 90-cent rate assailed for a distance of 46 miles. Defendant argues that the coal movement is light between Manistique and Gladstone; but that fact alone is not enough to justify the increase in the rate referred to, especially as comparisons made by complainant indicate that the rate is high. Thus, rates of 75 cents on hard coal and 55 cents on soft coal apply from Menominee, Mich., to Hermansville, Mich., 42 miles; 95 cents and 75 cents from Menominee to Escanaba, 64 miles; \$1.10 and 90 cents from Manistique, through Gladstone, to Rhinelander, Wis., 170 miles. A rate of \$1.15 applies on soft coal from Manistique to Minneapolis, Minn., 389 miles, although defendant insists that this rate is influenced by severe competition. Effective June 24, 1908, a rate of 75 cents per net ton was published on hard coal from Gladstone to Manistique, inapplicable, however, from Manistique to Gladstone; this rate was increased to \$1.10 September 20, 1910.

All of the shipments involved originated at points in Pennsylvania and West Virginia and were consigned as through shipments to Gladstone.

Upon all the facts of record we find that defendant has failed to establish the reasonableness of the increased rate on soft coal, considered as a factor in the through rate from Pennsylvania and West Virginia mines to Gladstone, and that complainant has shown the rate on hard coal, considered as a factor in the through rate, to be unreasonable to the extent that it exceeded 75 cents per net ton, which rates we find will be reasonable maximum rates for the future.

We further find that complainant made the shipments described in the foregoing statement of facts; that he paid and bore charges thereon at the rates herein found to have been unreasonable; that he has been damaged to the extent that the charges paid exceeded those which would have accrued upon basis of the rates which it is herein found would have been reasonable; and that he is therefore entitled to an award of reparation in the sum of \$445.57, which includes the amount of the undercharges, the collection of which is hereby waived, deducted from the overcharges, with interest thereon from December 30, 1913.

An appropriate order will be entered.

37 I. C. C.

No. 6843.

AMERICAN STEEL & WIRE COMPANY

v.

ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

Submitted December 17, 1914. Decided January 3, 1916.

1. The item of the southern classification effective April 20, 1914, here complained of, having been canceled since the hearing, the complaint is dismissed.
2. It is suggested that defendants revise their classification descriptions on certain iron and steel articles, making them more definite.

F. A. Gideon, R. F. Denison, and C. S. Belsterling, for complainant.

R. Walton Moore for defendants.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Wire in carloads in the southern classification is included under the classification of special iron and is defined as wire, iron or steel, in barrels or bundles or in coils, loose or on reels, or in boxes, whether plain, galvanized, or coppered. Wire thus presented for shipment in carloads generally takes commodity rates two-thirds of the sixth class, although in the absence of special commodity rates the rate applied both carload and less than carload is the sixth-class rate. Wire similarly described when shipped in less than carloads is rated sixth class. Prior to April 20, 1914, the classification description made no distinction between round and flat wire. On that date the item relating to the classification of wire was changed by the addition of a note as follows:

Flat wire, three-quarters inch or greater in width, will be rated same as sheet-iron plates or strips n. o. s.

Sheet-iron plates or strips not otherwise specified are rated less than carload fourth class, and carload, minimum weight 30,000 pounds, sixth class. It was shown that 90 per cent of wire shipments to the south prior to April 20, 1914, moved under rates two-thirds of sixth class for carload and sixth class for less than carloads. The new note described therefore increased the rates to the south on flat wire of a width of three-fourths inch and greater, carloads, from

37 I. C. C.

two-thirds of sixth class to sixth class and on less than carloads from sixth to fourth class.

Prior to the effective date of the classification change above described complainant, American Steel & Wire Company, a corporation, filed a protest seeking to have the tariff suspended. No suspension order was issued and complainant's protest was filed April 9, 1914, as a formal complaint. The complaint attacks the classification change and the rates resulting therefrom as unjust and unreasonable, unjustly discriminatory, and unduly preferential.

Round wire is usually made by drawing the cold metal through a die, while flat wire is ordinarily cold rolled. Lexicographers recognize that some wire may be flat and defendants themselves in the note complained of name the commodity "flat wire."

Flat wire is made in widths up to 16 inches. The average width is about 4 inches, and little of the wider sizes is made. Incident to the process of rolling flat wire, it is given some smoothness or polish, but it can not be said that it is polished or planished in the sense in which those words are ordinarily used. Flat wire is subjected to further manufacturing processes to a greater extent than round wire, the latter being generally shipped as a finished product. The average selling price of complainant's flat wire approximates \$60 per ton, which is about 50 per cent higher than that of its round wire. The amount of round wire shipped by complainant is about seven times the amount of flat wire shipped.

Flat and round wire when packed similarly will load about equally, and there is practically no danger of loss or damage in the transportation of either.

Defendants classify as special iron, which is the general classification of wire, shingle bands, in carloads; bar, band, hoop, rod, and plate iron more than one-sixteenth of an inch thick and not planished or polished; and bar steel or steel bars, polished or not polished, packed or not packed, carloads and less than carloads. Band and bar iron have been shipped under the special iron rates in competition with and for similar uses as the flat wire of complainant.

Since this case was heard and argued respondents have filed southern classification No. 41, I. C. C. No. 20, effective August 20, 1915, in which the note here objected to does not appear. A new item has, however, been added reading as follows:

Cold-rolled or drawn steel, flat:

In barrels, boxes, or crates, or in burlapped coils or bundles, less than carload.....	Fourth class
In packages named, straight or mixed carload, minimum weight 30,000 pounds.....	Sixth class
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This record discloses that there exists among shippers uncertainty as to the rates to be applied on flat wire, bar, band, hoop, rod, and flat iron and cold-rolled or drawn steel, flat. Complainant and other shippers have uniformly contended that flat strips of iron or steel, rolled and not polished, of whatever width, should when shipped in barrels or bundles or in coils loose, or on reels or in boxes, take the special iron rate accorded to wire. Some manufacturers have shipped the same commodity as band and bar iron and obtained the rate on special iron. One shipper, defendants' witness said, was charged the second-class rate on what complainant claims is wire. Such confusion should not exist. The classification change shown above does not remove the difficulty. The description of wire includes flat wire, while cold-rolled or drawn steel flat might be regarded also as including flat wire. This record is inadequate to a determination of what changes should be made in the classification and description of these articles. Defendants should give, through the Southern Classification Committee and after public notice and hearing, full consideration to these questions. The particular item complained of having been eliminated by the subsequently filed classification, an order will be entered dismissing the complaint.

37 I. O. C.

SOUTHERN PACIFIC COMPANY'S OWNERSHIP OF OIL STEAMERS.

No. 7060.

APPLICATION OF SOUTHERN PACIFIC COMPANY AND ASSOCIATED OIL COMPANY UNDER THE PROVISIONS OF SECTION 5 OF THE ACT TO REGULATE COMMERCE, AS AMENDED BY THE PANAMA CANAL ACT, IN CONNECTION WITH THE OWNERSHIP OF CERTAIN OIL STEAMERS. ON REHEARING.

Submitted December 9, 1915. Decided January 3, 1916.

Upon rehearing on the application of the Southern Pacific Company for an extension of time during which it may continue to operate oil steamers between certain points on the Pacific coast through its interest in the Associated Oil Company, and in the light of the new and additional facts of record on rehearing; *Held*, That so long as their respective operations remain as at present the Southern Pacific Company does not and may not compete with the steamers of the Associated Oil Company, and that their continued ownership and operation by the Southern Pacific Company through the Associated Oil Company is not and will not be in violation of section 5 of the act to regulate commerce as amended by the Panama Canal act.

F. H. Wood and H. C. Booth for Southern Pacific Company.

Edmund Tauszky for Associated Oil Company.

J. N. Teal for Portland Chamber of Commerce.

Seth Mann for San Francisco Chamber of Commerce.

REPORT OF THE COMMISSION ON REHEARING.

CLARK, Commissioner:

In our original report in this case, *S. P. Co. Ownership of Oil Steamers*, 34 I. C. C., 77, we considered, and denied in part, the application of the Southern Pacific Company and the Associated Oil Company under the provisions of section 5 of the act to regulate commerce as amended by the Panama Canal act, in which authority was sought to continue to operate beyond July 1, 1914, a fleet of oil steamers.

The Associated Oil Company, hereinafter referred to as the oil company, owns and leases large tracts of oil-producing land in the state of California and is engaged in producing, refining, and market-

ing oil and oil products. From certain loading ports in California to points on San Francisco Bay, to points in the Pacific northwest, to Honolulu, Hawaii, and to Alaska, it operates a fleet of steamers which is principally engaged in carrying the oil company's oil. The Southern Pacific Company, hereinafter referred to as petitioner, owns a majority of the stock of the oil company, and also owns and operates a system of railways, including lines to Portland, Oreg., San Francisco, Cal., and points on San Francisco Bay, from certain of the loading ports.

The evidence presented by petitioner on the original hearing was meager as to the oil company's operations as a whole and no evidence was presented with reference to its operations on San Francisco Bay. From tariffs on file with us, however, it appeared that petitioner participated in joint rates on oil via its rail line from certain of the loading ports to points in the Pacific northwest reached by the oil steamers. There was no evidence as to the rates for the transportation of this commodity via the steamers, and we held that by participating in joint rail rates from certain of these loading ports to points in Oregon and Washington, reached by the steamers, petitioner might compete with these steamers within the meaning of the act. We further held that the fact that the oil steamers were engaged principally in the transportation of the oil company's oil, which was for commercial, and not for company, use, did not differentiate this transportation from that of oil carried for other parties in such a way as to place the transportation outside the provisions of the act. However, we did not find that there was competition between petitioner and the oil company in the transportation of oil to Alaska or to the Hawaiian Islands. As there was no evidence in the record to show that the continued ownership and operation of these oil steamers by petitioner through the oil company would be in the interest of the public and of advantage to the convenience and commerce of the people, or that such continued ownership would neither exclude, prevent, nor reduce competition on the route by water, we denied, as of July 15, 1915, petitioner's application in so far as it concerned a continuance of this service from the loading ports in California to points in Oregon and Washington.

On June 29, 1915, petitioner and the oil company filed a joint petition for a postponement of the effective date of our order and for a rehearing, in which it is stated that they were advised by counsel and believed at the time of filing their original application that the act to regulate commerce, as amended by the Panama Canal act, did not apply to the transportation of a commodity by the corporation owning or producing it, but applied only to transportation for hire; and that acting on such advice no testimony was offered on the fol-

lowing questions of fact which they now consider necessary in support of their application, in view of our holding that petitioner may compete with its oil steamers within the meaning of the act, notwithstanding the fact that they carry principally the oil company's oil: First, whether there is or may be competition or possibility of competition between petitioner and the oil company. Second, if such competition does exist, is not the steamship company's operation in the interest of the public and of advantage to the convenience and commerce of the people, and will such continued operation exclude, prevent, or reduce competition on the route by water under consideration?

On July 1, 1915, we set aside our order and reopened the case for further hearing. A rehearing has been had, and in the light of the new and additional facts adduced we come to a reconsideration of the question of whether or not there is or may be competition between petitioner and the oil steamers in their operations between the loading ports and San Francisco and points in the Pacific northwest.

The loading ports for petitioner's steamers are all in the state of California. Port Costa and Avon are located on an arm of San Francisco Bay. Monterey, Gaviota, and Port Harford are all on the coast of California between San Francisco and Los Angeles. The oil company has a fleet of 15 vessels, composed of steamers, tugs, and barges, of a value in the aggregate of \$3,547,540.08. Four of these steamers are engaged almost exclusively in transportation to the Pacific northwest, and the average cargo for each is about 42,000 barrels. They carry both crude and refined oil, but one steamer is engaged principally in handling only refined oil. To carry the average load of 42,000 barrels of each steamer 130 or 135 tank cars would be necessary.

Oil is moved as needed from the oil fields by pipe lines to storage tanks at the loading ports and is there held for distribution. The contracts of sale are filled from the storage tanks, and no oil is sold direct from the field. The storage tanks at Port Costa have a capacity of about one-half million barrels. At Avon the tank capacity is approximately one and one-half million barrels; at Monterey, 310,000 barrels; and at Gaviota, 200,000 barrels. At Avon and Gaviota there are refineries owned by the oil company. From the storage tanks the oil flows into the steamers by gravity or is pumped in. A steamer can be loaded at Port Costa in from four to five hours, but at the other ports a longer time is required.

Petitioner and the oil company own in equal shares the stock of the Associated Pipe Line Company. This latter company owns two pipe lines, one a rifle line and the other a hot line, which extend from the so-called Kern River field in California to Port Costa. The oil

company also owns a pipe line extending from the Coalinga oil field to Monterey, and one from the Santa Maria field to Gaviota. The Kern Trading & Oil Company is the fuel supply company of the Southern Pacific and does not engage in commercial oil business. It owns oil lands in the Kern River field and uses the pipe lines of the Associated Pipe Line Company jointly with the oil company to transport the fuel oil of petitioner to Port Costa.

The principal unloading ports of the oil company's steamers in the Pacific northwest are Linnton, Oreg., a point on the Willamette River 8 miles west of Portland and reached by the Spokane, Portland & Seattle Railway, Everett and Seattle, Wash. Oil is also delivered at Eureka, Cal., to the Northwestern Pacific Railroad, the stock of which company is owned in equal shares by petitioner and the Atchison, Topeka & Santa Fe Railway Company. The Northwestern Pacific has determined that it is more economical to have the oil delivered by water at Eureka than to transport it as company material over its own rail line. At Linnton the oil company has a steel tank storage capacity of 168,000 barrels, a distributing plant, and a wharf for use of vessels delivering or receiving oil at that point. The wharf is connected with the storage tanks by pipe line. Oil is sold to customers calling at the wharf, and is loaded into their barges or vessels. It is also loaded into tank cars and sold f. o. b. the oil company's switch. Delivery is made to customers along the river by barges, and to smaller customers in Portland by auto trucks. Approximately 7,000 barrels of oil per day are sold in and around Portland by the oil company.

At Everett the oil steamers discharge their cargo into tanks that are owned by the Great Northern Railway Company, which purchases its fuel-oil supply from the oil company f. o. b. the tanks at Everett. At Seattle the steamers discharge their cargo into tanks that are owned by the Union Oil Company, as the oil company has no storage facilities at that point and has a contract with the Union Oil Company to store oil and make delivery for it. Approximately 35 per cent of the entire business of the oil company is at these points in Oregon and Washington. From July 1, 1912, to and including May 31, 1915, the oil company's steamers carried 11,235,047 barrels of oil from the loading ports to these points in the Pacific northwest. In the past several years the oil company has transported small cargoes of oil between certain of the loading ports for the purpose of relieving storage conditions. These have in no sense been commercial transactions.

The Standard Oil Company, the Union Oil Company of California, and the General Petroleum Company are engaged in moving oil to the Pacific northwest by means of tank vessels and are actively

in competition with the oil company. Their operations are similar, and they load principally from points on San Francisco Bay and at Port Harford. The Standard Oil Company owns a fleet of 11 vessels consisting of steamers and other water craft and has another steamer under construction. The Union Oil Company owns a fleet of nine steamers and other craft and has two new steamers under construction. Other independent companies own steamers engaged in these operations having an aggregate capacity of 40,000 barrels. It is asserted by the oil company that the cost to it of this transportation is approximately the same as that via its competitors' lines. As stated, during the period between July 1, 1912, and May 31, 1915, the oil company handled 11,235,047 barrels of oil from the loading ports to points in the Pacific northwest. During the same period the quantities handled by its principal competitors from their loading ports to these same destinations were: Union Oil Company of California, 10,022,700 barrels; Standard Oil Company, 14,003,100 barrels; General Petroleum Company, 439,242 barrels.

By the use of what is termed its bay fleet, consisting of two schooners and several barges, the oil company makes delivery of its products from Port Costa and Avon at points on and around San Francisco Bay to industrial plants, to certain government stations, to steamers at the wharves, to vessels lying in the bay, and to its own storage plants and distributing stations, from which oil is delivered in small quantities to customers in San Francisco and Oakland. About 16,000 barrels per day are so delivered. It is asserted that it would be impracticable for vessels at the docks to receive their oil in tank cars, as they would block the tracks and seriously interfere with loading or unloading the vessels; that while it would be possible to haul the oil by rail to certain of the manufacturing plants, such movement would be in most instances indirect and unsatisfactory, and more expensive than the delivery by water. Petitioner on brief and argument asserts that we have no jurisdiction over these operations on San Francisco Bay, as the transportation is wholly within the state of California.

The Standard Oil Company, the Union Oil Company, the Shell Oil Company, and the General Petroleum Company compete with the oil company in the sale and delivery of oil to points on the bay. They have storage tanks on the bay and supply their customers by vessels in a manner similar to that employed by the oil company.

Oil is very desirable water freight. It loads to the carrying capacity of the boat and can be handled much more cheaply by water than by rail. It is asserted that when oil can be carried by water a paralleling rail line can not compete with the water line for that traffic, not only because the rail line can not meet the rate

of the water line, but because of delays and other disabilities which cause the shipper to prefer the transportation by water. Particularly is this true in the instant case, where petitioner's rail line between San Francisco and Portland is over the heavy grades and curves of the Siskiyou Mountains.

The average barrel of oil contains about 42 gallons and weighs approximately 325 pounds. There are about 6.14 barrels of fuel oil to a ton. From cost figures kept by it the oil company has ascertained that the maximum cost of transporting oil by any of its steamers from Port Costa to Linnton is 15.15 cents per barrel, or something less than 5 cents per 100 pounds, and approximately 93 cents per ton. These figures include operating expense, maintenance, insurance, depreciation, and interest. The only additional expense necessary before the oil is delivered to the consumer is a plant expense at the delivery port, which amounts to approximately 1 cent per barrel, except when the delivery from the storage plant at destination is made by barge, in which event the delivery expense varies slightly with the length of the barge haul. The estimated maximum transportation cost per barrel from Port Costa to Everett, Wash., is 15.72 cents.

We may fairly conclude from the record that the cost of transporting this oil by the steamers, including the plant expense at the unloading ports, is not in excess of 6 cents per 100 pounds, or \$1.20 per ton. The present rail rate on oil from Port Costa to Portland, a distance of 740 miles via petitioner's line, is \$5.60 per ton. The lowest rail rate on any commodity between these points is 20 cents per 100 pounds, or \$4 per ton. This rate is exceeded at certain intermediate points under permission granted by us, because of water competition between these terminal points. From cost studies petitioner asserts that the actual average cost of transporting oil by rail from Port Costa to Portland is 40 cents per barrel. This includes only the locomotive and freight train service and the cost of maintaining the oil cars and locomotives, based on the average cost for average traffic on this line. In other words it is what might properly be termed only the train service expense. The cost by rail would therefore be approximately \$2.50 per ton, as compared with a cost of \$1.20 per ton via the steamers. Similar studies of costs for the transportation of oil between the other loading ports and certain of the other destinations here involved have been made by petitioner and the oil company, and they are ascertained to be relatively the same as those for the transportation by rail from Port Costa to Portland, and by water from Port Costa to Linnton and Everett.

The price of the oil at Portland fluctuates from time to time, and is based on the price at Port Costa, plus the cost of transportation.

This is a delivered price. In the last three years it has varied from 75 cents to \$1.15 per barrel. At the time of the hearing of this case the price was 80 cents per barrel. At the same time oil at Port Costa was worth 65 cents per barrel. Consumers in Portland assert that the difference in the price at the two points represents the cost of transportation of the commodity. In this instance it would be 15 cents per barrel, or approximately the actual transportation cost, including interest and depreciation, of handling the oil as arrived at by the oil company.

From a study made for the purpose of determining the relative cost of handling fuel oil by rail as compared with the cost of hauling it by steamer to Portland, the operating department of petitioner concluded that it could be hauled to Portland by steamer and brought south by rail from Portland approximately half the distance between Port Costa and Portland as cheaply as it could be transported by rail from Port Costa to this midway point.

For the calendar year 1913 the movement of oil via petitioner's rail line from all of the loading ports to points in Oregon and Washington amounted to 131,166 barrels. During the year 1914 it was 61,417 barrels. For the year 1913 the movement from and to the same points via the oil steamers was 4,366,989 barrels and for 1914 it was 3,679,818 barrels. The movement by rail in 1913, therefore, was only three-tenths of 1 per cent, and in 1914 less than two-tenths of 1 per cent, of the movement by water.

The oil company estimates that the average transportation cost for hauling oil from Avon and Port Costa to points on San Francisco Bay by the two schooners that handle 90 per cent of this business is approximately 2 cents per barrel. From a study of actual figures petitioner estimates its rail transportation cost for carrying oil from Port Costa to points on San Francisco Bay at 6.4 cents per barrel. The transportation cost for delivery by barge is approximately 5 cents per barrel. Refined oil is delivered from Avon at different points on San Francisco Bay, but principally to the storage plant of the oil company in San Francisco. It is estimated that the cost of transportation via the motor boat which handles this refined oil traffic is 5 cents per barrel. The carload rail rate on oil from Port Costa and Avon to San Francisco is 50 cents per ton, or approximately 8 cents per barrel. It is asserted by petitioner that this is a very low rate and that it has not been able to handle any crude oil at this rate to points on San Francisco Bay that could move by water or pipe line. There is but an occasional movement of refined oil by rail to these points.

The uncontradicted testimony of various witnesses, some of whom were business men of the city of Portland and members of the trans-

portation committee of the chamber of commerce of that city, all of whom urge a continuance of this service, is substantially as follows: In recent years oil has become a fuel of general use in manufacturing, in apartment houses and office buildings, and on logging trains in the Pacific northwest. There is no coal mined in the vicinity of Portland and the source of supply of fuel wood is becoming more and more distant from the cities. Oil is considered the best fuel both from the point of view of economy and also for its heat value. A considerable expense must be undergone in providing the proper facilities and equipment for the use of oil as fuel. In order to make its use as a fuel practical it is necessary to have a dependable and continuous supply at a low price. The greater number of the contracts for oil are entered into for a period of three years and each consumer has one or more storage tanks where a reserve quantity is kept on hand. The movement by water is more dependable than that by rail; delivery is made in a shorter time; shipments can be and are made in larger volume, and there is a greater degree of certainty of the timely arrival of the vessel, as tank cars are frequently delayed. If fuel oil had to be hauled by rail and sold at a price which would enable the rail carriers to make a fair profit for its transportation, such a price would be prohibitive for practical purposes. If the oil company were forced to discontinue its operations there would be no increase in the rail movement and at the present time the oil company's competitors would not be able to handle the additional business. Consumers who now depend upon the oil company for their supply would, therefore, be put to a serious disadvantage until the other companies operating boat lines could sufficiently equip themselves to handle the increased business which would undoubtedly move by water. The present rail rates are prohibitive and there is a great inconvenience in handling large quantities of oil in tank cars. Certain business men of San Francisco testify that the service of the oil company around San Francisco Bay is more economical and dependable than that by rail, and ask that it be allowed to continue.

The conclusion reached by all of these witnesses is that it would be in the interest of the public and of advantage to the convenience and commerce of the people to allow these boats to continue to be operated by the petitioner through the oil company, and that such continued operation would not prevent, exclude, or reduce competition on the route by water. The Portland Chamber of Commerce, the Seattle Chamber of Commerce, the San Francisco Chamber of Commerce, and the Astoria Chamber of Commerce, through accredited representatives, filed resolutions at the hearing asserting that the operation of the steamers by petitioner through the oil company

is in the interest of the public and that petitioner should be allowed to continue such operation. No protest against, or objection to, the continued operation appears.

From the above facts it clearly appears that petitioner would be at a great disadvantage in attempting to compete for this traffic with the oil company, not only because it can not possibly handle the traffic on rates as low as those of the steamers, but because shippers prefer the service of the water line. It also appears that the rail line secures less than 1 per cent of this traffic, and if the service of the oil company were discontinued the traffic would not move via petitioner's rail line but would be diverted to the oil company's competitors. In view of these facts, can it be said that petitioner does or may compete with the oil company, within the meaning of the act?

While it is true that in our decisions in certain applications under the Panama Canal act we have held that the publishing of rates by a rail line, or the participation in joint rates, between points served by a boat line owned by it, was sufficient to make the rail line a competitor with the boat line within the meaning of the act, in each of those cases the competition or possibility of competition has been probable or potential. In other words, we found that competition did in fact, or might with reasonable probability of economic success, exist between the rail line and the boat line, or would exist if the boat line were divorced from the rail line. As was stated in *Application S. P. Co. in re Operation S. S. Co.*, 32 I. C. C., 690:

The words "may compete for traffic" do not mean a vague, possible though improbable competition, but mean a probable, potential competition as when the water line is entirely divorced from the railroad. We must, therefore, look at the conditions as they will exist if this divorce is effected.

Competition is a question of fact to be determined by the circumstances in each case. It means something more than an occasional movement via a rail line which parallels a water line, where the rail line operates at a serious disadvantage in that it does not and can not offer rates and service on anything like equal terms with the water line. Whether or not there would be a normal, active competition between the rail line and the water line if operating independently of each other is the best practical test of competition. If petitioner were required to discontinue the service of its oil steamers, this traffic would continue to move via water; the rail transportation would in no wise be increased and a water competitor would be eliminated. The act was not intended to prevent water lines competing with rail carriers, but, on the other hand, it contemplates encouragement of such competition by divorcing the water line from the rail carrier when it is found that the rail line is using the water carrier to stifle competition, or is not operating it in the best interests of the public.

We find that the competition between petitioner and the oil company's steamers is not such a probable, potential competition as is contemplated by the act. We further find that so long as their respective operations remain as at present petitioner's operation of these steamers through the oil company is not, and will not be, in violation of section 5 of the act to regulate commerce as amended by the Panama Canal act.

In view of the disposition made of this case it will not be necessary to pass upon the question of whether or not we have jurisdiction over the oil company's boat operations on San Francisco Bay.

87 L. Q. Q.

No. 7100.
CAPE GIRARDEAU PORTLAND CEMENT COMPANY
v.
ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
ET AL.

Submitted January 22, 1915. Decided December 28, 1915.

Rate of 36 cents per 100 pounds on cement from Cape Girardeau, Mo., to Raceland, La., not shown to have been unreasonable or unjustly discriminatory. Complaint dismissed.

J. R. Walker for complainant.

Thomas Bond and *Carl Giessow* for St. Louis & San Francisco Railroad Company and receivers thereof.

C. W. Owen for Morgan's Louisiana & Texas Railroad & Steamship Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of portland cement, with its principal place of business at Cape Girardeau, Mo. By complaint, filed July 12, 1914, it alleges that the rate of 36 cents per 100 pounds charged by defendants for the transportation of one carload of cement from Cape Girardeau to Raceland, La., May 18, 1912, was unreasonable and unjustly discriminatory to the extent that it exceeded a rate of 15.5 cents per 100 pounds. Reparation is asked and a rate of 15.5 cents for the future. The claim was presented to the Commission informally June 30, 1913.

The shipment consisted of 115 barrels of cement and was delivered at Raceland by Morgan's Louisiana & Texas Railroad & Steamship Company. Charges were collected in the sum of \$157.32 on 43,700 pounds at a rate of 36 cents per 100 pounds.

Raceland is a local point on the branch line of Morgan's Louisiana & Texas Railroad & Steamship Company that extends from Raceland Junction south to Lockport and is intermediate to Lockport. Cape Girardeau was in St. Louis territory for rates to southern Louisiana. A specific commodity rate of 15.5 cents applied on cement from St. Louis and grouped points to Mathews, Clotilda, and Lockport. The departure from the long-and-short-haul rule of the fourth section was protected by a fourth section application that was not

set for hearing with the complaint because the situation had been rectified by the cancellation of the 15.5-cent rate to Mathews, Clotilda, and Lockport, effective January 21, 1914.

The former 15.5-cent rate to points beyond Raceland is the only evidence adduced against the rate charged to Raceland. The relative movement of cement to Raceland and to the points beyond does not appear. Defendants state that the 15.5-cent rate to points beyond Raceland was published without the knowledge or consent of Morgan's Louisiana & Texas Railroad & Steamship Company.

We find upon all of the facts disclosed that the rate charged on the shipment involved is not shown to have been unreasonable or unjustly discriminatory, and the complaint will be dismissed.

87 I. C. O.

No. 7431.
H. W. TAYLOR & COMPANY
v.
WABASH RAILROAD COMPANY ET AL.

Submitted July 12, 1915. Decided December 28, 1915.

Rates charged for the transportation of wooden railroad ties in carloads from St. Louis, Mo., to Chicago, Ill., found to have been unreasonable to the extent that they exceeded the aggregate of the intermediate rates contemporaneously applicable to and from East St. Louis, Ill. Reparation awarded.

Edward Lereille for complainant.

E. R. Newman for Wabash Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in the purchase and sale of lumber and railroad ties at Chicago, Ill. By complaint, filed October 26, 1914, it alleges that the charges collected by defendants for the transportation of 16 carloads of wooden railroad ties from St. Louis, Mo., to Chicago during the period from October 1, 1913, to March 31, 1914, were unreasonable and in violation of section 4 of the act in that they exceeded the charges that would have accrued at the aggregates of the intermediate rates contemporaneously in effect to and from East St. Louis, Ill. Reparation is asked.

The shipments were moved by the St. Louis Merchants' Bridge Terminal Railway to East St. Louis and by the Wabash Railroad thence to destination. Charges in the sum of \$739.73, exclusive of a \$6 switching charge on one shipment, were collected at a joint rate of 8 cents per 100 pounds on 10 shipments and at a rate of 9.6 cents on the remaining shipments, although the exact basis for the 9.6-cent rate does not appear. The intermediate rates to and from East St. Louis were 1 cent per 100 pounds to East St. Louis and 8 cents per tie, minimum 300 ties per car, from East St. Louis to Chicago. Ties are estimated to weigh 150 pounds per tie, on which basis the 1-cent rate to East St. Louis was equivalent to 1.5 cents per tie. Effective April 16, 1914, a rate of 9.5 cents per tie was established from St. Louis to Chicago. The discrepancy shown between the joint rates charged and the aggregate of the rates to and from East

St. Louis was covered by Fourth Section Application No. 2060, which was not set for hearing with the complaint because of the voluntary adjustment of the situation by defendants prior to the filing of the complaint. The present rates from St. Louis and East St. Louis to Chicago are 13.1 cents per tie from St. Louis and 11.6 cents from East St. Louis. Defendants offered no evidence in justification of the rates assailed.

We find that the rates charged on each of the 16 shipments involved were unreasonable to the extent that they exceeded the aggregates of intermediate rates concurrently in effect to and from East St. Louis, on which basis the total charges would have amounted to \$559.13; that complainant made the shipments involved as described and paid and bore charges thereon at the rates herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the aggregates of the intermediate rates concurrently in effect to and from East St. Louis; and that it is entitled to reparation in the sum of \$180.60, with interest from April 10, 1914.

An order will be entered accordingly.

37 I. C. C.

No. 7602.
PILCHER HARDWARE COMPANY
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY.

Submitted July 7, 1915. Decided January 3, 1916.

Following *Griffing v. C. & N. W. Ry. Co.*, 25 I. C. C., 134, the two and one-half times first-class rate charged for the transportation of one motorcycle from Milwaukee, Wis., to Ida Grove, Iowa, found to have been unreasonable. Reparation awarded.

F. W. Knoche, for complainant.
R. H. Widdicombe, for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are J. H. Pilcher, E. W. Pilcher, and J. R. Pilcher, copartners, engaged in the hardware business at Ida Grove, Iowa, under the firm name of Pilcher Hardware Company. By complaint, filed December 21, 1914, they allege that the rate charged by defendant for the transportation of one motorcycle from Milwaukee, Wis., to Ida Grove, in November, 1912, was unreasonable. Reparation is asked on the basis of the less-than-carload rating now in effect. The claim was presented to the Commission informally August 17, 1914.

The shipment weighed 300 pounds and charges were collected in the sum of \$6 at two and one-half times the first-class rate of 80 cents per 100 pounds. We held in *Griffing v. C. & N. W. Ry. Co.*, 25 I. C. C., 134, that the rates on motorcycles, less than carloads, in western classification territory were unreasonable to the extent that they exceeded one and one-half times reasonable first-class rates. The single question contested is complainants' right to reparation which defendant questions on the ground that complainants added to the selling price of the motorcycle a sum equal to the freight charges and therefore suffered no damage. But this question is concluded by *Burgess v. Trans-Continental Freight Bureau*, 13 I. C. C., 668, and *Ballou & Wright v. N. Y., N. H. & H. R. R. Co.*, 34 I. C. C., 120, where we held under similar circumstances that reparation should be awarded.

We find that the rate assailed was unreasonable to the extent that it exceeded one and one-half times the first-class rate concurrently

in effect; that complainants made the shipment involved as described and paid and bore charges thereon at the rate herein found to have been unreasonable; that complainants have been damaged to the extent that the charges paid exceeded the charges which would have accrued at the rate herein found reasonable; and that they are entitled to reparation in the sum of \$2.40, with interest from November 7, 1912. An order will be entered accordingly. As the western classification has rated motorcycles in less than carloads one and one-half times first class since February 14, 1913, no order will be entered for the future.

37 I. C. C.

No. 7634.
I. H. TAFTE
v.
AMERICAN EXPRESS COMPANY ET AL.

Submitted March 18, 1915. Decided December 29, 1915.

Reparation awarded on account of unreasonable charges collected for the transportation of a carload of fresh fish from Celilo, Oreg., to New York, N. Y.

W. W. Banks for complainant.

H. H. Smith for American Express Company and National Express Company.

E. W. Bennett for Northern Express Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the fish business at Celilo, Oreg. By complaint filed December 30, 1914, he alleges that the charges collected by defendants for the transportation of a carload of fresh fish from Celilo to New York, N. Y., in 1910, were unjust and unreasonable. Reparation is asked. The claim was presented informally August 3, 1911.

Complainant delivered a carload of fresh fish to the American Express Company at Celilo, September 15, 1910, with instructions to forward it to New York by the most expeditious route. The only rate applicable via American Express all the way was \$8.75 per 100 pounds, any quantity. The shipment weighed 21,600 pounds and moved: American Express to Wallula, Wash.; Northern Express to St. Paul; Chicago, Burlington & Quincy Railroad to Chicago; National Express Company beyond. No joint through rate applied over the route of movement, and transportation charges were collected in the sum of \$896.40 at a combination carload rate of \$4.15 per 100 pounds, composed of a rate of \$1.15 from Celilo to Wallula and a rate of \$3 beyond. Complainant contends that a reasonable rate would not have exceeded \$3 per 100 pounds, the rate established by the American Express from Celilo to New York October 30, 1910.

Defendants had a joint through carload rate of \$3 per 100 pounds from Portland, Oreg., to New York. Portland is farther than Celilo from New York. The same rate applied from various other Columbia

River points, including Fallbridge, directly across the Columbia River from Celilo. The omission of the application of this rate from Celilo is attributed to oversight. Defendants admit that the rate charged was unreasonable and express willingness to make reparation on the basis sought.

The rate of \$3 established October 30, 1910, from Celilo to New York was canceled February 1, 1914, and there has been no express agent at Celilo for some time. However, a carload rate of \$3 applies from Portland to New York via the American Express, and the tariff naming this rate contains a provision, in accordance with rule 39 of Tariff Circular 19-A, that upon a reasonable request therefor rates not in excess of those from the more distant points will be established from intermediate points on one day's notice. In fact, the rate applies from all Oregon express stations in "block 405," which includes Celilo, all express to New York, and the reopening of an express station at Celilo would automatically establish the rate from that point, without restriction as to route.

Upon all of the facts of record we find that the rate assailed was unreasonable to the extent that it exceeded \$3 per 100 pounds; that complainant made the shipment involved as described and ultimately bore freight charges thereon at the rate herein found unreasonable; that complainant has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that he is entitled to reparation in the sum of \$248.40, with interest from December 10, 1910. An order will be entered accordingly.

37 I. C. C.

No. 7647.
BAKER-WAKEFIELD CYPRESS COMPANY, LIMITED,
v.
TEXAS & PACIFIC RAILWAY COMPANY ET AL.

Submitted October 4, 1915. Decided December 28, 1915.

Carload of cypress shingles shipped from Plattenville, La., to Huntington, W. Va., found not to have been misrouted. Complaint dismissed.

E. W. McKay for complainant.

Frank Koch for Texas & Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business at Plattenville, La. By complaint, filed January 7, 1915, it alleges that due to misrouting defendants collected unreasonable charges for the transportation of a carload of cypress shingles shipped November 25, 1912, from Plattenville to Huntington, W. Va. The claim was presented to the Commission informally within two years after it accrued.

The shipment was delivered to the Texas & Pacific Railway, routed specifically in the bill of lading "Via Alexandria—I. M. & S.—Dupo, Ill.—Big Four—C. & O. Del'y." and moved as routed. Charges were collected at a through rate of 34 cents per 100 pounds, composed of a specific basing rate of 16 cents to Thebes, Ill., and an arbitrary of 18 cents beyond. A joint rate of 26 cents per 100 pounds was concurrently in effect over routes through New Orleans, La. Complainant states that before making the shipment it was advised by the local agent of the Texas & Pacific Railway at Plattenville that the lowest rate applied over the route the shipment moved. The Texas & Pacific denies that its agent so advised complainant, but the issue joined is immaterial. Shippers are chargeable with knowledge of the legal tariff rates, and the definite specification by shippers of the more expensive of two or more available routes relieves carriers of the duty of forwarding the shipments over the cheapest route. *Poor Grain Co. v. C., R. & Q. Ry. Co.*, 12 I. C. C., 418.

We find that the shipment involved was not misrouted, and an order will be entered dismissing the complaint.

No. 7957.

FISHER MANUFACTURING COMPANY

v.

**NEW YORK, NEW HAVEN & HARTFORD RAILROAD
COMPANY.**

Submitted September 16, 1915. Decided January 3, 1916.

Reparation awarded on account of switching charges collected in excess of the lawful tariff charges.

E. E. Howe for complainant.

No appearance for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of cotton goods at Fisherville, Mass. By complaint, filed April 27, 1915, it alleges that the charge of \$2 per car collected by defendant from February 9 to September 13, 1913, for switching 28 cars containing less-than-carload shipments of cloth from Fisherville to an interchange point for subsequent interstate transportation was unjust and unreasonable. Reparation is asked in the sum of \$56. The claim was presented to the Commission informally September 3, 1914.

There is no railroad station at Fisherville. The nearest station on defendant's line is at Saundersville, Mass. Complainant and defendant jointly maintain a siding from defendant's line to complainant's mill yard at Fisherville. Defendant places cars on the siding for loading and complainant loads cloth directly from the mill into the cars, in order to avoid rehandling at the railroad station. The cars involved were loaded by complainant in this manner regardless of the weights of the several loads. Defendant's agent at Saundersville assessed no charge for the switching from complainant's plant, but subsequently requested payment of \$56 on the 28 cars involved on the ground that none of them weighed 6,000 pounds or more. In order properly to bring the matter to our attention complainant paid the charges.

Provisions for the assessment of switching charges at Saundersville in effect when these shipments moved were as follows:

Outbound less-than-carload shipments from one consignor, loaded in or on cars at private sidings or from point of interchange with connecting trolley

37 I. C. C.

lines, requiring handling by station force at point of shipment or at point of interchange with connecting trolley lines, will be switched at 20 cents per ton of 2,000 pounds, minimum charge \$2 per car.

(a) Less-than-carload shipments of 6,000 pounds or more, loaded by shippers on private sidings or received from connecting trolley lines requiring rehandling at transfer stations of this company, but not requiring rehandling by station force at point of shipment or at point of interchange with connecting trolley lines, will be switched from private sidings or point of interchange with connecting trolley lines (see note) without charge.

This company reserves the right to load additional freight in or on cars containing such shipments.

NOTE.—When transfer station is at point of shipment, less-than-carload shipments of 6,000 pounds or more, loaded by shippers on private sidings or received from connecting trolley lines, requiring rehandling by station force at point of shipment, will be switched from private sidings or point of interchange with connecting trolley lines without charge.

Complainant contends that the defendant should not have switched the cars until they were loaded to 6,000 pounds or more. No one representing defendant appeared at the hearing, but defendant's answer, while denying that the charge involved was unreasonable *per se*, admits that through the error of its agent at Saundersville complainant was forced to pay the switching charges involved, and states that defendant is ready and willing to refund the charges if it may do so lawfully.

The rule first quoted does not specify any minimum load and does not make the charge provided dependent on a minimum load. It provides for the assessment of the charge only on less-than-carload shipments "requiring handling by station force at point of shipment or at point of interchange." The second provision of the rule requires that the shipments shall weigh 6,000 pounds or more, and shall not require handling by station force, etc. Complainant's shipments did not require handling by defendant's station force.

We find that defendant has no rule for less-than-carload shipments under 6,000 pounds not requiring handling by defendant's station force; that the switching charges assailed were collected without tariff authority; that complainant paid the charges and was damaged in the sum of \$56, and that it is entitled to reparation in the sum of \$56, with interest from August 15, 1914.

There is no evidence to base a finding of what would be a reasonable charge for switching shipments of the kind involved from Fisherville to Saundersville. Since the shipments involved moved complainant has been careful to load its shipments to, or in excess of, 6,000 pounds. If defendant desires to impose a charge at Saundersville on less-than-carload shipments of less than 6,000 pounds which do not require handling by their station force at the point of shipment, etc., proper provision must be made in its tariffs.

INVESTIGATION AND SUSPENSION DOCKET No. 608.
GRAIN FROM MANITOWOC, WIS.

Submitted November 20, 1915. Decided January 11, 1916.

Proposed increased reshipping rates on grain and grain products, and proposed increased charges under the reshipping rates on grain, to be effected by the withdrawal of transit service, the imposition of a switching charge, and an increase in the minimum weights, from Manitowoc and Milwaukee, Wis., Chicago, Ill., and other points, to central freight association and trunk line territories, the Virginia cities, and other points, on shipments routed by way of the Pere Marquette Railroad and the Ann Arbor Railroad and connections, found not justified and ordered canceled.

G. C. Conn for Pere Marquette Railroad Company.

A. L. Smith and *G. Ohlinger* for Ann Arbor Railroad Company.

H. S. Bradley for Ann Arbor Railroad Company and Pere Marquette Railroad Company.

W. M. Hopkins for protestant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Investigation and Suspension Dockets Nos. 469, *Grain Rates from Milwaukee, Wis., to New York, N. Y., via Manitowoc, Wis., Across Lake,* and 500, *Reshipping Rates on Grain and Grain Products from Milwaukee, Wis., to New York, N. Y., and Other Points via Chicago, Ill.,* involved the proposed cancellation of the so-called reshipping rates on grain and grain products applicable from Milwaukee, Wis., by way of Manitowoc, Wis., or Chicago, Ill., to points in central freight association and trunk line territories. We found that the cancellations proposed were not justified to points in trunk line territory, including Buffalo, N. Y., and Pittsburgh, Pa., and points taking the same rates, but were justified to points in central freight association territory, excluding Buffalo and Pittsburgh, and points taking the same rates. *Grain Rates from Milwaukee*, 38 I. C. C., 417. The respondents in that case included the Pere Marquette Railroad Company, hereinafter, with its receivers, referred to as the Pere Marquette, and the Ann Arbor Railroad Company, hereinafter referred to as the Ann Arbor. These two carriers now propose to increase the charges on shipments of domestic and export grain and grain products from Chicago, Milwaukee, and Manitowoc, and other

points, routed over their lines to various eastern points, the Pere Marquette by increasing the reshipping or proportional rates maintained and by canceling certain rates, and both carriers by withdrawing transit service at Manitowoc, the Ann Arbor by imposing a switching charge at Manitowoc, and by increasing the minimum weight on certain kinds of grain. The tariff schedules involved were filed to take effect March 18, 1915, and later dates, but upon protest by the Western Elevator Company at Manitowoc, one of the protestants in *Grain Rates from Milwaukee, supra*, were suspended until January 16, 1916, except the schedules relative to the withdrawal of transit service at Manitowoc and to the switching charge at that point which were suspended until May 7, 1916. Only the charges on shipments by way of the Pere Marquette and the Ann Arbor are involved and these two carriers propose to increase their charges by different means. The Pere Marquette, for example, proposes to increase its tariff rates; the Ann Arbor to impose a switching charge at Manitowoc and to increase the minimum weights applicable. Both propose to withdraw transit service at Manitowoc.

The proposed reshipping rates on domestic grain and grain products to the Virginia cities from Milwaukee and Manitowoc across Lake Michigan, from Milwaukee across lake through Manitowoc, and from Chicago and other Chicago rate points all rail on shipments routed via the Pere Marquette and connections are 2 cents per 100 pounds higher than the present rates. The present reshipping rates to Norfolk and Newport News, for example, are 13.8 cents per 100 pounds on domestic grain and 14.5 cents on grain products. The rates proposed are 15.8 cents on grain and 16.5 cents on grain products. The present rates also apply from Manitowoc and through Manitowoc from Milwaukee by way of the Ann Arbor car ferry across lake, from Milwaukee and through Milwaukee from Manitowoc across lake by way of the Grand Trunk car ferry, from Manitowoc and Milwaukee all rail through Chicago and from Chicago all rail to destinations. The proposed increased rates from Milwaukee and Manitowoc are restricted to shipments routed by way of the Pere Marquette car ferry across lake; the rates from Chicago to shipments routed over the Pere Marquette and its connections.

The primary reason for the Pere Marquette's desire to increase the present reshipping rates is the present necessity under these rates of absorbing the charge imposed by connecting lines for switching from the grain elevators at Manitowoc to the Pere Marquette's car ferry, when transit service is accorded on grain at that point. The Pere Marquette also is required to bear reclaim charges at Manitowoc, elevation charges, a proportion of the grain door expense, per diem charges on foreign cars, the cars principally used by the Pere Marquette for this traffic, and the cost of switching to its connections at

Toledo. The Pere Marquette's division of the present rate up to Toledo on grain to Norfolk from Milwaukee through Manitowoc across lake is 31 per cent, which represents a revenue of 1.9 mills per ton-mile. Its net earnings after deducting the absorptions described are less than one-half mill per ton-mile. Its earnings under the joint reshipping rate on grain from Milwaukee to Norfolk are 2.26 mills per ton-mile and under the proposed rate would be 2.59 mills. Its car-mile earnings under the present rate are 6.78 cents and under the proposed rate would be 7.79 cents. The present reshipping rate on grain from Manitowoc across lake to Norfolk yields 2.34 mills per ton-mile; the rate to Newport News 2.54 mills. The rates from Chicago yield 2.27 mills to Norfolk and 2.47 mills to Newport News.

The present reshipping rates from and to points involved admittedly are low, but we have often observed that the rates on grain and grain products from producing points in the west to the Atlantic seaboard should be relatively low because of the large volume of the traffic. *Rates on Flaxseed*, 23 I. C. C., 272, 275. The Pere Marquette moved 3,417 carloads of protestant's grain during the year ended June 1, 1915. The Pere Marquette was the only carrier participating in the proposed increased rates which was represented at the hearing and its evidence related exclusively to its earnings under its divisions of the present rates and the cost of handling the traffic. The conclusion submitted is that its divisions of the present rates are unremunerative. But as stated in *Lumber Transit Privileges at Buffalo, N. Y.*, 33 I. C. C., 601, 605—

An increase in rates can not be justified on the ground that a particular carrier, which transports shipments over only a comparatively small portion of the entire through route, receives an unsatisfactory division of the joint rate.

We find that the proposed increased rates from Milwaukee, Manitowoc, Chicago, and other Chicago rate points, applicable via the Pere Marquette, to the destination points involved will result in discrimination and have not been justified.

The present reshipping rates on grain and grain products for export from Milwaukee to Norfolk and Newport News on shipments routed through Manitowoc and across lake, in connection with the Pere Marquette would be increased from 12.2 cents per 100 pounds to 13.8 cents on grain and from 12.8 cents to 14.5 cents on grain products. Substantially the same kind of evidence as that already described is offered in justification of these increases. However, respondent Pere Marquette's testimony was not directed specifically to the justification of the increases proposed in the reshipping rates on grain and grain products for export.

The present export rates on grain and grain products are 1.6 cents per 100 pounds and 1.7 cents, respectively, less than the domestic rates, and the ton-mile earnings correspondingly less.

We find that the respondents have not justified the proposed increased reshipping export rates on grain and grain products because if permitted unjust discrimination would result.

The cancellation proposed of the reshipping domestic and export rates on grain and grain products from Milwaukee to Norfolk, Newport News, and other eastern points on shipments routed through Chicago or Chicago Junction points by way of the Pere Marquette also has not been justified. Only the Pere Marquette appeared to defend this cancellation, and its only evidence was the assertion that the movement of grain from Milwaukee through Chicago was negligible.

We said in *Grain Rates from Milwaukee*, 33 I. C. C., 417-424, that—

Respondents strongly insist that under the limitations contained in section 15 of the act with regard to establishment of through routes and joint rates the Pere Marquette and the Grand Trunk can not lawfully be compelled to maintain the reshipping rates from Milwaukee via Chicago to eastern destinations because they have their own lines across the lake directly from Milwaukee, their rail lines from Chicago, and no line between Milwaukee and Chicago. Section 1 of the act includes ferries within the term "railroad." There is force in the argument that a carrier should not be required to remain party to a through route and joint rate under conditions which would preclude the right to require the establishment of such through route and joint rate if it did not already exist. We do not, however, think that that principle applies here, because neither the Pere Marquette nor the Grand Trunk proposes to withdraw from participation in through routes and joint rates from Milwaukee via Manitowoc or via Chicago, except with regard to these particular reshipping rates.

The Pere Marquette was ordered to maintain in connection with the Chicago & North Western and eastern connections joint reshipping rates on domestic grain and grain products from Milwaukee to trunk line territory by way of Manitowoc and also by way of Chicago. Manitowoc is 80 miles from Milwaukee; Chicago, 85 miles. The Pere Marquette also participates in through rates on grain called local rates and in joint class rates from and to the points involved by way of Chicago.

Both the Pere Marquette and the Ann Arbor now accord transit service at Manitowoc on grain shipments moving under the reshipping rates from Milwaukee to eastern points when routed by way of Manitowoc and the Pere Marquette or the Ann Arbor car ferries across lake. The withdrawal of this service would render applicable the local rates from Milwaukee. The present reshipping rate from Milwaukee to Norfolk is 13.8 cents per 100 pounds, while the local rate from Milwaukee to Norfolk is 18.8 cents.

The Western Elevator Company operates two elevators at Manitowoc of an aggregate capacity of 3,000,000 bushels. During the

year ended June 1, 1915, this company handled 10,000,000 bushels of grain, about 33 per cent of which was shipped from Milwaukee under the reshipping rates applicable by way of Manitowoc. Protestant also owns many elevators in Iowa on the Illinois Central, and gathers large quantities of grain at points on the Chicago, Rock Island & Pacific in Iowa and Minnesota. Through rates apply from these points to Milwaukee, but not to Manitowoc. Protestant admits that the rates applicable are low, but naturally desires to handle its grain through its own elevator at Manitowoc on a parity of rates with its competitors at Milwaukee and Chicago. Identical rates have applied from these three points to eastern markets for many years.

Transit service on grain has long been accorded at Milwaukee, and in *Grain Rates from Milwaukee, supra*, we said that—

If grain moving from Milwaukee via Chicago or via Manitowoc under the reshipping rates is accorded additional transit at Manitowoc or at Chicago, it is because the carriers elect to accord it.

Respondents now propose to cancel transit service at Manitowoc, but to continue it at points east of Manitowoc under the same joint reshipping rates from Milwaukee to eastern points and also on through billed shipments originating at points from which no through joint rates are in effect, not stopped at Manitowoc or Milwaukee.

We find that the proposed cancellation of transit service at Manitowoc would result in unjust discrimination and has not been justified.

The switching charge proposed by the Ann Arbor at Manitowoc is a charge of \$3 per car on shipments of domestic and export grain accorded transit service at Manitowoc under the reshipping rates from Manitowoc, Milwaukee, and other points to eastern points. The switching is from the elevators at Manitowoc to the Ann Arbor's car ferry and is performed by the Minneapolis, St. Paul & Sault Ste. Marie Railway at a charge of \$2 per car from the elevator on its line and by the Chicago & North Western and the Soo line at a charge of \$3 per car from the elevator located on the North Western. These charges are absorbed by the Ann Arbor. The schedules involved provide that the \$3 charge proposed shall accrue to the Ann Arbor.

The practice of absorbing switching charges at Manitowoc on across-lake grain has been observed for many years by the carriers serving that point and is the result of railroad competition at Milwaukee and Chicago. The Ann Arbor now urges that this traffic should come to its car ferry from the elevator at Manitowoc free of charges to it, as the switching lines receive either 10 per cent of the reshipping rates or their local rates to Manitowoc. The Ann Arbor contends that under these circumstances it should not be required to extend its rails to the elevator.

The proposed schedules would in effect apply the reshipping rates from the apron of the ferry at Manitowoc on shipments from Manitowoc instead of from the elevator. The effect on the reshipping rate from Milwaukee by way of Manitowoc would be to increase the charges to shippers \$3 per car when transit is accorded at Manitowoc. The reshipping rates from Manitowoc across lake via the Ann Arbor conform to the rates to points in trunk line territory and Virginia cities from Manitowoc via the Chicago & North Western across lake by the Grand Trunk car ferries. Similar rates also apply to the same points from the elevators at Milwaukee across lake by the Grand Trunk car ferries. No switching charge is imposed in addition to the reshipping rate over any of these routes for switching from the elevator to the car ferry. The Ann Arbor urges that the nonabsorption of switching charges is not novel and that in many instances where the carriers' revenue per car is less than \$10 carriers performing the road haul do not absorb the switching charges imposed by connecting lines. However, the Ann Arbor's revenue from the traffic involved greatly exceeds \$10 per car. Respondent shows that agent Rainer's tariff I. C. C. No. 438 provides that the Pere Marquette will not assume the switching charges of connecting lines on transit grain at Toledo and that a number of transit tariffs on lumber similarly provide that the road-haul carriers will not absorb the switching charges of connecting line at numerous Michigan points. Protestants reply that it is customary for line-haul carriers serving Chicago to absorb the charges of switching lines at Chicago in the reshipping rates from Chicago, and that this practice is of long standing. Tariffs on file with the Commission show the following rule relative to the absorption of switching charges at points on the Ann Arbor in Michigan and Wisconsin:

RULES GOVERNING THE ABSORPTION OF SWITCHING CHARGES.

The Ann Arbor Railroad Company will absorb the published switching charges of connecting carriers • • • at points named • • • lawfully on file with the Interstate Commerce Commission • • • provided:

1. The freight revenue of this company on traffic originating at or destined to a point on this company is not reduced by such absorption below \$10 per car. • • •

2. The freight revenue of this company and its connections on traffic originating at or destined to a point on a connecting line is not reduced by such absorption below \$10 per car. • • •

The Ann Arbor contends further that its division of the joint rate involved is inadequate. The average revenue per car of oats earned by the Ann Arbor during the first six months of the year 1915 was \$23.18 for an average carload of 52,293 pounds. The total expense for grain doors, elevation, switching, reclaim, and car-ferry expenses averaged \$13.24 per car. The average net revenue per car was \$9.95,

or 1.45 mills per ton-mile. The Ann Arbor states that its operating expenses amounted to 3.44 mills per ton-mile and that a division of 55 per cent of the through rate for its haul of about 33 per cent of the total distance involved is necessary if the traffic is to pay operating expenses. The operating cost stated of 3.44 mills per ton-mile is not the actual cost of operation for grain but is the average expense per ton-mile on all traffic, including less-than-carload traffic.

We find that the switching charge proposed has not been justified in that the refusal to absorb would result in unjust discrimination.

Increased minimum weights are proposed by the Ann Arbor on domestic oats, buckwheat, speltz, barley, corn, kafir corn, milo maize, pop corn, rye, and the screenings of such grains, from Manitowoc and Kewaunee, Wis., and points in Michigan and Ohio to points in central freight association, trunk line, and New England territories and to the Virginias, Canada, and other points. The present minima are: 48,000 pounds on oats, 40,000 pounds on buckwheat and speltz, 60,000 pounds on wheat, 56,000 pounds on barley, corn, kafir corn, milo maize, pop corn, and rye. The same minima apply to the screenings. From and to many of the points involved these minima are subject to the following rule of the official classification:

If the carrier is unable to furnish a car of weight capacity equal to or in excess of the prescribed minimum carload weight and a car of less weight capacity is available, such smaller capacity car will be furnished and the minimum weight to be charged therefor will be its marked capacity, but in no case less than 40,000 pounds.

From and to other points involved the following rule applies:

On grain (except oats) shipped in cars having a marked capacity of less than 40,000 pounds the minimum carload weight charged will be the marked capacity of the car. If the car furnished has a marked capacity of 40,000 pounds, or in excess thereof, the minimum carload weight charged will be as per official classification. * * *

On oats, the minimum carload weight will be as per official classification, unless the weight of the shipment, when the car is loaded to its full visible capacity, that is, completely filled * * *, is less than the minimum carload weight provided by the official classification, in which case the weight to be charged for shall be the actual weight of the shipment.

The minima proposed for all of the grains named except wheat, on shipments routed via the Ann Arbor, are 56,000 pounds; 60,000 pounds on wheat; to apply on cars of all capacities.

The present minima adjusted as they are to the capacities of the cars used are more serviceable and equitable than the proposed minima. It does not appear that the proposed minima can be loaded into cars of all capacities.

Respondents' evidence is confined to shipments of oats. Respondent Ann Arbor showed that the increased minimum would also apply on oats from both Manitowoc and Kewaunee, the only points

at which the Ann Arbor receives oats moving on reshipping rates. But increased minima also are proposed from other points including Manistique, Menominee, and numerous other points in Michigan on the Ann Arbor. Tariffs on file with the Commission disclose that the present minimum on oats under the reshipping rates from Milwaukee via Manitowoc across lake in connection with the Ann Arbor is 48,000 pounds for cars of that capacity or over, which has been in effect for many years except during the period from May 15, 1915, to November 12, 1915, when it was 56,000 pounds. The proposed minimum of 56,000 pounds from Manitowoc would cause a violation of the long-and-short-haul rule of the fourth section, as Manitowoc is intermediate from Milwaukee to points involved over the route described.

Exhibits submitted show that during a period of car shortage, when export oats were moving in heavy volume, the average loading on 126 cars of oats for export was 55,498 pounds per car, and that during the first six months of 1915, 501 carloads averaged 52,293 pounds per car. But neither the size nor the capacity of the cars used is shown. Respondent testifies that ordinarily 48,960 pounds of oats can be loaded into cars 34 feet long, 8 feet high, and 7 feet wide, inside dimensions, but that some 34-foot cars will load to 60,000 pounds; that 36-foot cars will load to 62,976 pounds; 40-foot cars to 75,040 pounds. Protestant admits that carloads of oats will average over 48,000 pounds per 36-foot car and that it is physically possible to load 56,000 pounds of oats into cars of 60,000 pounds capacity. Loads of oats vary greatly in weight because of the variation in the weights of oats, but the record shows that the average loading on cars of all sizes and capacities, even under favorable circumstances, does not reach 56,000 pounds. It is not shown that the proposed minimum reasonably comports with the average loading.

Protestant urges that since 48,000 pounds is a commercial carload of oats and also the minimum maintained by respondents in the official classification territory, the increase proposed would be unjustly discriminatory. Protestant states that its objection to the proposed increase would, in a measure, be removed if other carriers contemporaneously advanced the minimum on oats to eastern markets to 56,000 pounds, but this the other carriers have refused to do.

We are of the opinion that a flexible minimum on oats reasonably adjusted to the capacities of the different size cars used as now provided has many advantages over the proposed minimum, and find that the proposed increased minima have not been justified.

Although the methods by which the Pere Marquette and the Ann Arbor propose to increase the earnings which would accrue to them under the proposed rates and charges would clearly result in unjust discrimination and hence are not justified, it is not to be understood

that by such a finding it is the purpose or desire of the Commission to require respondents to perform transportation services subject to the act under rates and charges the earnings from which are non-compensatory. Nothing is presented of record which would indicate that rates on grain and grain products from Manitowoc across lake to eastern seaboard ports and Virginia cities, for example, may reasonably be higher than the rates contemporaneously maintained from Milwaukee or from Chicago to the same destinations. Neither does the record adequately disclose whether a difference, and, if so, what difference, could or should be made in rates on grain and grain products from points beyond Manitowoc as compared with rates from points beyond Milwaukee or Chicago to the same eastern destinations. It may be that other plans could be proposed to accomplish the ends here sought under which no unjust discrimination would result against any point and the rates and charges could be justified.

An order will be entered requiring respondents to cancel the schedules under suspension.

37 I. C. C.

**CHESTNUT RIDGE RAILWAY.
SECOND INDUSTRIAL RAILWAYS CASE.**

No. 4181.

**IN THE MATTER OF ALLOWANCES TO SHORT LINES OF
RAILROAD SERVING INDUSTRIES.**

**INVESTIGATION AND SUSPENSION DOCKET No. 414.
CANCELLATION OF RATES IN CONNECTION WITH
SMALL LINES BY CARRIERS IN OFFICIAL CLASSI-
FICATION TERRITORY.**

Decided December 23, 1915.

The Lehigh & New England Railroad directed to revise its switching arrangements with the Chestnut Ridge Railway in the manner indicated herein.

Same appearances as in the original report.

SUPPLEMENTAL REPORT OF THE COMMISSION.

MEYER, Commissioner:

In pursuance of the course outlined in the original report in this proceeding we shall examine the propriety of divisions and allowances which connecting trunk lines propose to accord the Chestnut Ridge Railway Company on traffic to or from points on its line. The Chestnut Ridge Railway will hereinafter be referred to as the Chestnut Ridge. The Central Railroad of New Jersey and the Lehigh & New England Railroad, with which it connects, will respectively be called the Central and the New England.

The Chestnut Ridge extends from Lehigh Gap to Kunkletown, Pa., a distance of 10.5 miles, with a branch 1.49 miles long extending from its station at Palmerton East through Palmerton to a connection with the Central. This branch connects the so-called west and east plants of the New Jersey Zinc Company of Pennsylvania. All the capital stock of this company and of the Chestnut Ridge is owned by the New Jersey Zinc Company of New Jersey, a separate corporation. From Palmerton East to Little Gap the railway extends for about 5 miles through a valley approximately one-half mile wide. To the north and northeast of Little Gap and Kunkletown is a broad valley given up principally to farming and lumber-

ing. This road maintains passenger depots at all stations on its line, and maintains freight houses and has agents stationed at Palmerton, Palmerton East, Little Gap, and Kunkletown.

The road was originally chartered on March 8, 1898, as the Chestnut Ridge Railroad Company of Pennsylvania. It was reorganized under its present name on December 19, 1901, after having been sold under foreclosure. With the exception of the Palmerton branch the railroad was built and put in operation prior to its reorganization. It was owned and operated independent of any industry located on its line until June, 1907, when the zinc company secured control of its entire capital stock and, at about the same time, purchased a tract of land at Palmerton East on the line of the railroad with a view of erecting thereon its east plant. Simultaneously with the building of this plant, begun in 1910 and completed in 1911, the Palmerton branch was built, connecting the east plant with the west plant. All the tracks of the Chestnut Ridge are located outside of the plant inclosures of the controlling industry. Interchange yards are located at the entrances to both plants. The zinc company handles all traffic within its plants with its own locomotives, and no allowance of any nature is made by the railway company to cover such service. The equipment of the Chestnut Ridge consists of three locomotives, three freight cars, and seven passenger cars. Most of the traffic moves in foreign cars. The Chestnut Ridge interchanges equipment on the per diem basis, but receives no switching reclaims.

Since the completion in 1911 of the Palmerton branch and the east plant of the zinc company the traffic of the railway has increased rapidly. It is, however, still comparatively light. The increase has been, in the main, traffic to and from the proprietary plants, to which the railway had no access before 1911. The annual report for the year ended June 30, 1913, shows a total of 459,432 tons of freight and 19,733 revenue passengers carried during the year, and a total transportation revenue of \$61,783.83. Of this \$44,381.18 was freight revenue, \$3,948.15 passenger, mail, and express revenue, and \$12,080.52 special service train revenue from special employees' trains for the zinc company. A statement filed of record shows that during this year the proprietary industry contributed 93 per cent of the total tonnage and 74.7 per cent of the freight revenue. The annual report for the year ended June 30, 1915, shows an increase to \$86,227.17 in freight revenue and to \$103,212.39 in total rail line transportation revenue. In 1914 and 1915 the road for the first time earned a net income of \$12,471.92 and \$21,330.11, respectively. The investment value reported for the year ended June 30, 1915, is \$461,304.21.

On the zinc company's traffic, which, as already noted, constitutes most of the traffic of the Chestnut Ridge, the haul over that road ranges from about 100 yards to 1½ miles. Part of this traffic is local

to the line of the Chestnut Ridge and consists of hauling freight between the east and west plants, but the major portion, which yields the greater part of the revenue, is traffic interchanged between the plants of the proprietary industry and connecting trunk lines. Prior to 1914 the only line with which the Chestnut Ridge connected was the Central at Palmerton and Lehigh Gap. At that time the only interchange traffic of the zinc company which moved over the Chestnut Ridge was to and from the east plant. Traffic between the west plant and the Central is, and always has been, interchanged direct without the intervention of the Chestnut Ridge. Since the building of the Palmerton branch interchange between the Chestnut Ridge and the Central is effected only at Palmerton, the line from Palmerton East to Lehigh Gap having been almost completely abandoned. During April, 1914, the New England completed its line from Lehigh Gap to a connection with the Chestnut Ridge about 100 yards west of the east plant, and traffic is now also interchanged with that line. This short stretch of track and the Palmerton branch are the only parts of the line used for the zinc company's traffic. At present interchange is effected by the Chestnut Ridge between the east plant and the Central and between both west and east plants and the New England. The 10 or more miles extending from Palmerton East to Kunkletown are used almost exclusively for serving the general public.

Joint class rates are, and for a considerable number of years have been, maintained between points on the Chestnut Ridge and points on the Central and its connections which, as a general rule, are the same as the combinations on the junction point between these two lines. Joint commodity rates on sand, ice, and oxide of iron ore are published from points on the Chestnut Ridge east of Palmerton East to certain points on the lines of the New England and the Central and their connections which are, as a general rule, higher than the commodity rates maintained from the junction point by the amount of the division allowed the Chestnut Ridge. The divisions of these rates accorded the Chestnut Ridge do not appear to be improper. As operated at present, this road is a common carrier with which connecting lines may join in publishing through rates. In making similar arrangements in the future it should be remembered, however, that even on nonproprietary traffic the divisions or allowances must not be abnormal. In a supplemental report in this proceeding, with regard to the Chicago, West Pullman & Southern Railroad, 37 I. C. C., 408, we said:

No abnormal divisions or allowances may in any cases be made, for it is evident that by paying or permitting more to be paid than would be just and reasonable for any service performed by the industrial line the trunk lines may be giving the controlling industry a rebate.

There also appear to be maintained on a different basis than outlined above joint class rates between points on the Chestnut Ridge and points on connecting lines in Pennsylvania, and joint commodity rates on coal from mines in Pennsylvania to points on the Chestnut Ridge.

Until March 12, 1915, the Chestnut Ridge received no allowances or divisions from either of the trunk lines with which it connects on traffic shipped by or consigned to the proprietary industry. From June 23, 1914, until March 12, 1915, the New England had in effect an absorption tariff providing for the absorption of switching charges of the Chestnut Ridge at Palmerton of \$2 per car on all carload traffic, minimum weight 40,000 pounds, and on less-than-carload traffic, 20,000 pounds in the aggregate, in which the zinc company's traffic was specifically excepted. The Chestnut Ridge charged the zinc company \$2 per car for switching between its plants and the trunk line connections. Effective March 12, 1915, the New England published a tariff which provides as follows:

At Palmerton, Pa., connecting line terminal charges will be absorbed by Lehigh & New England Railroad Company, as noted herein, on shipments coming from or destined to stations on Chestnut Ridge Railway.

Carloads:	Per car.
On all traffic (except bituminous coal and coke)	\$2. 00
On bituminous coal and coke	2. 50
Less than carloads:	
On 20,000 pounds in the aggregate	2. 00

NOTE.—On carload shipments the minimum weight specified in tariffs governing the commodity, and lawfully on file with the Interstate Commerce Commission, will apply.

This tariff is still in effect and makes no exception as to New Jersey Zinc Company traffic. The Central makes no provision for the absorption of the switching or terminal charges of the Chestnut Ridge at Palmerton.

Attention should first be called to the fact that the absorption of \$2.50 per car on bituminous coal is in excess of the Chestnut Ridge switching charge of \$2 per car, and to that extent is obviously improper. Furthermore, although it may be proper for the New England to pay the Chestnut Ridge for switching cars to and from the proprietary plants, the amount paid must not exceed a reasonable charge. The haul between the interchange tracks of the New England and the east plant is approximately 100 yards, and to and from the west plant about a mile and a half. For the former service \$2 per car would certainly appear to be excessive. In the supplemental report in this proceeding dealing with the allowances accorded the Chicago, West Pullman & Southern Railroad, *supra*, certain considerations were outlined which should prevail in arriving at the

amounts which trunk lines may allow common-carrier industrial lines for switching, and among other things we said:

* * * Interior plant switching or any other service differing radically in nature from the general work of switching cars between industries and connections should be segregated as to investment and operating costs of the industrial line so far as this may be feasible. The engine hour will usually be found a safer guide than cars handled for making this general separation. For interior plant switching the industry benefited should be charged with the allocated capital and operating costs. The remaining operating and capital costs measure the maximum which may be received net for other switching, either in the form of switching charges or allowances, there being a minimum charge for the shortest switching and a somewhat higher charge for the longer distance switching. From its entire business the industrial line should not earn more than a fair return on the investment, less reserve for accrued depreciation, and including material and supplies in the investment. * * *

For "interior plant switching" there may be substituted in the quotation above to make it fit the present case "all operations other than interchange switching." From all of the facts before us we find that \$1 per car is the maximum that should be allowed for switching for the New England to and from the east plant.

Attention should also be called to another absorption tariff of the New England, which became effective November 19, 1915, and provides as follows:

On all traffic originating at or destined to stations on the Chestnut Ridge Railway when coming from or destined to points in territory described in Chestnut Ridge Railway I. C. C. No. 186, or reissues thereof, the Lehigh & New England Railroad Company will absorb the Chestnut Ridge Railway Company's charges up to and including, but not exceeding, the following amounts:

Carloads, minimum weight as per official classification, 20 cents per ton of 2,000 or 2,240 pounds as rated.

Less carloads, 1½ cents per 100 pounds.

Simultaneously with the publication of this tariff the Chestnut Ridge published proportional rates from all of its stations to its connection with the New England in the same amount as the absorptions provided by the latter in the tariff referred to above. The effect of these tariffs is to carry the junction point rates on all traffic back to all points on the Chestnut Ridge. Shortly after the New England filed this tariff the Central filed a like tariff to become effective December 6, 1915. Both roads have been notified that their tariffs fail to meet the Commission's tariff regulations and have accordingly withdrawn their tariffs. While it is proper for the line-haul carrier to absorb the terminal or switching charges of a connecting line it may not absorb its local transportation charges in the manner indicated above. *Coal Rates on the Stony Fork Branch*, 26 I. C. C., 168. The same result may be accomplished by publishing joint rates from all points on the Chestnut Ridge no higher than the

junction point rates, but it is expected that the trunk line will not shrink its rates more than it would in case the Chestnut Ridge were not controlled by its principal shipper. On traffic to and from the east plant a division of more than \$1 per car would be excessive for the reasons outlined in the preceding paragraph. Likewise, divisions for movements to or from industries and public sidings at Palmerton should be confined to a reasonable switching charge.

The New England will be expected to reduce its allowance for switching to and from the east plant to \$1 per car. This, however, is to be regarded merely as the maximum allowance prescribed in the light of the limited information at our disposal. The carriers involved should carefully scrutinize all allowances accorded, and if necessary make changes to comply with the principles laid down in this and related cases.

HARLAN, *Commissioner*, dissenting:

From 1898, when it first began its operations, until 1914, a period of 16 years, shippers on the line of the Chestnut Ridge Railway were required either to pay its local charges in addition to the charges of its trunk line connection or to pay joint interstate rates that were the sum of the local rates to and from the trunk line junction. No complaint of this adjustment appears ever to have been made.

In 1907 the New Jersey Zinc Company, in disregard of the spirit, if not the letter, of the commodities clause, acquired the entire capital stock of the Chestnut Ridge. The zinc company's west plant at Palmerton, on the line of the Central Railroad of New Jersey, was then in operation; and shortly after it purchased the Chestnut Ridge the zinc company caused the latter to build a branch line 1.5 miles in length from Palmerton East to Palmerton, thus connecting up its west plant with its east plant. At that time and until 1914 the only trunk line connection of the Chestnut Ridge was the Central Railroad of New Jersey. But in April, 1914, the Lehigh & New England made a connection with the Chestnut Ridge at a point 100 yards west of the east plant of the zinc company. No allowances, however, were then paid on the traffic of the industry by either trunk line, and they continued in this legitimate way to compete for the traffic until after the announcement of the supplemental report in the *Industrial Railways Case*, 32 I. C. C., 129. On March 12, 1915, and as a means of wresting the zinc company's traffic from the Central Railroad of New Jersey, the Lehigh & New England began to pay switching allowances to the zinc company's railroad. That these allowances were intended as mere bounties in return for the zinc company's traffic is shown by the fact that in some instances the allowances so paid exceeded the local charges of the Chestnut Ridge, which for years, as just stated, has been assessed in addition to the trunk line rate.

In this manner the zinc company was thereafter relieved from paying its railroad for handling its traffic and transferred that burden to the Lehigh & New England. The effect of this upon the Central Railroad of New Jersey is very striking. It now finds itself under a curious disadvantage in continuing to compete for the traffic of the west plant of the zinc company in that its rails reach the very gate of that plant, thus leaving the Chestnut Ridge no opportunity to perform a service on the traffic of its proprietary company and thereby depriving the Central Railroad of New Jersey of any legal basis or, better stated, of the legal fiction, under which it may barter for the traffic of the zinc company by paying allowances to its railroad. This competing trunk line, therefore, must now either lose the traffic of that plant or resort to one of three courses: (a) It must pay allowances to the zinc company or its railroad without any legal basis therefor; (b) it must, as other trunk lines have done at the plants of other industries, move its tracks away from the west plant of the zinc company, so as to provide space on which the zinc company's railroad may build a connecting link as a basis for claiming an allowance; or (c) it must reduce its rates below those charged by the Lehigh & New England.

Apparently recognizing some evil in the situation, the Commission, instead of striking down all the allowances by the Lehigh & New England as a device to trick the law, has merely reduced to \$1 a car the allowance paid by it to the Chestnut Ridge for its 100-yard service on the traffic of the east plant.

During the period when there was available to the zinc company but a single trunk line outlet there was no bartering for its traffic, the charges of the Chestnut Ridge then being paid by this shipper and other shippers served by it; but when the second trunk line outlet was established the large traffic of this industrial company at once became a thing for sale. Ostensibly the thing purchased and paid for by the trunk line is not the traffic of the zinc company, but a service performed for that company by its railroad for which it previously had to pay. In a real and practical sense, however, the railroad of the zinc company has now become a mere device by which it is able to prey upon the revenues of this trunk line. With its large traffic as a menace and its railroad as the means, this shipper has now succeeded, through a tax upon trunk line revenues, in placing upon the general shipping public the expense of a service performed by its railroad wholly for itself and for which in justice it should be required to pay.

The point to which attention is especially directed and which this record clearly illustrates is that when an industrial company with a large traffic either builds or acquires a railroad, it places itself in a

position to defeat the real purpose of the regulating statute, as here is done, by accomplishing what is unlawful through means having an outward legal appearance. The public policy expressed in the commodities clause of the act to regulate commerce, as amended, forbids the mingling of commerce and transportation in one interest and under one control. The violation of this principle by the New Jersey Zinc Company and the steps thereafter taken to turn the purchase of its railroad to its financial advantage is but illustrative of a practice initiated by other large industrial concerns. So long as such a practice is not condemned by the Commission it will continue and doubtless extend, to the detriment and disadvantage of the general shipping public.

**MOSHASSUCK VALLEY RAILROAD.
SECOND INDUSTRIAL RAILWAYS CASE**

No. 4181.

**IN THE MATTER OF ALLOWANCES TO SHORT LINES OF
RAILROAD SERVING INDUSTRIES.**

INVESTIGATION AND SUSPENSION DOCKET No. 414.

**CANCELLATION OF RATES IN CONNECTION WITH
SMALL LINES BY CARRIERS IN OFFICIAL CLASSIFI-
CATION TERRITORY.**

Decided January 3, 1916.

1. Upon the facts of record the present divisions of through rates accorded the Moshassuck Valley Railroad found not excessive.
2. Giving long time credit to proprietary industries constitutes an unlawful concession and an unjust discrimination against shippers who ordinarily are required to pay their freight charges promptly.

Same appearances as in original report.

SUPPLEMENTAL REPORT OF THE COMMISSION.

MEYER, Commissioner:

This supplemental report concerns the propriety of joint rate arrangements and divisions maintained between the New York, New Haven & Hartford Railroad and the Moshassuck Valley Railroad, hereinafter respectively called the New Haven and the Moshassuck Valley.

The Moshassuck Valley extends from a connection with the New Haven at a point within the city limits of Pawtucket, R. I., to Saylesville, R. I., a distance of 2 miles. The aggregate length of its tracks is 4.9 miles, comprised of 2 miles of main track and 2.9 miles of side-track. The New Haven is the only trunk line with which it connects. The Moshassuck Valley's equipment consists of 2 standard-gauge locomotives, 2 passenger cars, and 22 freight cars. Its employees, exclusive of 3 general officers, number 28. It performs both passenger and freight service, the latter comprising the bulk of its traffic and consisting of switching between the New Haven and industries or public team tracks located on its line. It employs one locomotive in inter-

change switching. The maximum distance between the junction point of the Moshassuck Valley with the New Haven and the farthest industry or team tracks located on the line of the former is 2 miles. The physical interchange, however, is effected entirely on the tracks of the New Haven, necessitating a movement by the locomotive of the Moshassuck Valley beyond the junction point.

The Moshassuck Valley is compensated for interchange switching through divisions of joint rates in effect between points on its line and all points in the United States to or from which the New Haven has through rates in effect. With the exception of the rates on coal, all of the joint rates are the same in amount as the rates applicable to or from Pawtucket, the junction point. The Moshassuck Valley receives the following divisions, in cents per 100 pounds:

Class -----	1	2	3	4	5	6
Division -----	2	2	2	1	1	1

About half of the tonnage of the Moshassuck Valley is comprised of manufactured articles which move at class rates and the major portion of the remainder consists of coal brought to the industries located on the Moshassuck Valley. The greater proportion of the coal comes from tidewater and entails a haul of from 6 to 14 miles via the New Haven and a maximum of 2 miles additional via the Moshassuck Valley. On this traffic the division accorded the Moshassuck Valley is added to the junction point rate in arriving at the through rate. It was testified on behalf of the New Haven that a division of the line-haul rate for so short a distance would be unreasonable. The rate on coal from tidewater is 40 cents per gross ton to points on the Moshassuck Valley, of which that road receives a division of 10 cents. The local rates of the Moshassuck Valley for switching cars or transporting goods from one point or plant on its line to another are the same as the divisions for the various classes named above. For switching cars from one part of an industrial plant to another a charge of \$2 per car is made.

The Moshassuck Valley was incorporated June 11, 1874. The line was completed shortly after, and has since been operated continuously. It is capitalized at \$50,000, all of which has been paid in cash. There are no outstanding bonds. Of a total of 500 shares of stock 250 are owned by Frank A. Sayles, 50 shares by the estate of William F. Sayles, 199 shares by individuals for the benefit of that estate, and 1 share by Charles O. Reid. Frank A. Sayles is one of the trustees and has a beneficial interest in the estate of William F. Sayles. Of the industries located on the line of the Moshassuck Valley the Sayles Bleacheries, Glenlyon Dye Works, and the Lorraine Manufacturing Company are controlled by Frank A. Sayles and the trustees of the estate of William F. Sayles. Frank A. Sayles also has a minority in-

terest in the Crefeld Waste & Batting Company. The owners of the railroad have no financial interest in the L. B. Darling Fertilizer Company, the Lonsdale Bakery Company, or the O'Brien Construction Company, which are also located upon this line.

The following table shows an analysis of the freight tonnage and revenue during the year ended June 30, 1913:

Character of traffic.	Tonnage.	Per cent of total.	Revenue.	Per cent of total.
Interchange switching:				
Controlling interests.....	144,051	90.4	\$37,958.05	79.15
Independent shippers.....	15,289	9.6	3,318.89	6.13
Local switching:				
Controlling interests.....	(¹)		6,905.46	12.76
Independent shippers.....				
Car service:				
Controlling interests.....			4,887.25	9.03
Independent shippers.....			142.00	.28
Passenger and mail service.....			903.05	1.67
Total.....	159,340	100.0	54,114.71	100.00

¹ Tonnage of local switching not shown in figures submitted.

It will be noted that during the year ended June 30, 1913, the controlling interests contributed 90.4 per cent of the total tonnage interchanged with the New Haven and 91.94 per cent of the total operating revenue. Less than 13 per cent of the total revenue as given in the table above was derived from local switching. Considering the relationship between the Moshassuck Valley and the industries which contribute the greater part of its traffic it is evident that an excessive division or allowance given by a connecting line to this railroad would be an unlawful concession.

It has been the practice of the Moshassuck Valley to extend a long time credit to certain shippers before demanding payment of freight charges. The record shows that during the year ended June 30, 1913, two of the industries controlled by the proprietors of the Moshassuck Valley owed an aggregate of over \$50,000 for accumulated freight charges. This would appear to constitute an unjust discrimination against the independent shippers, who are required to pay their freight charges promptly. The practice should be made nondiscriminatory immediately. In *Hocking Valley Ry. Co. v. United States*, 210 Fed., 735, 740, the court said:

Upon the broad and underlying question whether it is such discrimination as is forbidden by the Elkins act, in force in 1900, for the carrier to insist that shippers generally pay cash while it gives long credit to another similar shipper, and gives such credit pursuant to a previous contract--upon this broad question we have no doubt. Such conduct, by its very terms, is discrimination. Shippers are not treated alike. Giving to one shipper four months' time in which to raise the money, even if interest is added, while the same privilege is denied to others, is plainly a "concession or discrimination." It also must be considered a concession or discrimination "in respect to transportation"; it can not

be thought that these two words in this clause of the Elkins act pertain only to a facility of transportation; they are used in immediate connection with "rebate," and so the clause must be intended to reach and affect the subject of freight payments. Whether, by this concession, it results that the property is "transported at a less rate than that named in the tariffs" is not important, because the statutory condemnation extends also to concessions "whereby any other advantage is given or discrimination is practiced." Such a discrimination might or might not be of pecuniary value to the freight payer. It is conceivable that a shipper, with sufficient working capital upon which he could not otherwise earn 5 per cent, would save money by paying cash; but it is clear that such a system of freight credits amounts to loaning money to the shipper, and is equivalent to providing for him working capital. * * *

Upon the record it does not seem unreasonable for the New Haven to continue extending the junction point rate to or from points on the Moshassuck Valley on commodities other than coal and to accord that road reasonable divisions out of joint rates established on that basis. In this connection attention is called to what was said in the supplemental report in this proceeding with regard to the Chestnut Ridge Railway, 37 I. C. C., 558:

* * * It is expected that the trunk line will not shrink its rates more than it would in case the Chestnut Ridge were not controlled by its principal shipper.

The question remains whether the present divisions of joint rates are just and proper. The testimony is that these divisions yield on the average about \$3 per car moved by the Moshassuck Valley in interchange switching. The average loading of coal was given as 35 tons, and if this amount be correct the average loading for the rest of the traffic would appear to be about 9 tons.

The investment value of the road less reserve for accrued depreciation for the year ended June 30, 1913, is given as \$120,609.73. However, in the annual report for the year ended June 30, 1915, attention is called to the fact that the cost of property not used for transportation purposes was included in this amount. The figures for the year 1915, corrected accordingly, give \$97,848.43 as the investment value of road and equipment, and \$5,939.45 as accrued depreciation, leaving a balance of \$91,908.98. During the past 40 years of operation the Moshassuck Valley does not appear to have declared any dividends. It is stated by its superintendent that—

the total credited to profit and loss account amounted on June 30, 1914, to \$57,875.94, which instead of being declared in dividends has been put back into the property.

For the year ended June 30, 1915, the total credit balance transferred from the income to the profit and loss account was \$58.37. A comparison of the operating expenses of the Moshassuck Valley with those of class 3 roads would appear to show, however, that the amount charged by the Moshassuck Valley under general expenses is ab-

normal. This is evident from the following table, which shows the proportion which the various operating expense accounts bear to total operating expenses. The figures for the Moshassuck Valley are for the year ended June 30, 1915, and for class 3 roads of the year ended June 30, 1912, the last year in which these small roads were separately totaled.

	Moshassuck Valley.	Class 3 roads.
	Per cent.	Per cent.
Maintenance of way and structures.....	10.6	30.0
Maintenance of equipment.....	11.4	14.5
Traffic.....	1.8	1.8
Transportation.....	80.9	43.0
General.....	25.3	9.7
Total.....	100.0	100.0

The relatively high proportion of general expenses of the Moshassuck Valley is apparent. Whereas the general expenses for all class 3 roads constituted 9.7 per cent of total operating expenses the general expenses for the Moshassuck Valley constituted 25.3 per cent of total operating expenses. The record shows that the largest item under general expenses is the salary of the president of the road of \$6,400. Since the president is practically the sole owner of the road, his salary may be regarded as the equivalent of a dividend. If the general expenses of the Moshassuck Valley had been in the same proportion to total operating expenses as prevailed for all class 3 roads, the net income would have been increased by over \$6,000, and the road would have earned a normal rate of return on the book cost of its property devoted to transportation purposes.

Upon the facts of record we find that the present divisions of through rates accorded the Moshassuck Valley are ample but not excessive. The interested carriers, however, who have the necessary information at their disposal, are expected to apply the principles and rules laid down in this proceeding. *Second Industrial Railways Case*, 34 I. C. C., 596; *Chicago, West Pullman & Southern Case*, 37 I. C. C., 408; *Lorain & Southern R. R. Co. Case*, 37 I. C. C., 497; and *Chestnut Ridge Railway Case*, 37 I. C. C., 558, and if necessary to revise their divisions and allowances accordingly.

HARLAN, *Commissioner*, dissents.

87 I. C. C.

No. 6527.
ELM CITY LUMBER COMPANY
v.
ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Submitted September 18, 1915. Decided January 4, 1916.

Reparation awarded on account of an unreasonable rate charged for the transportation of a carload of lumber from Spring Hope, N. C., to Yardley, Pa.

Homer Miller for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business at New Bern, N. C. By complaint, filed January 23, 1914, it alleges that the rate of 21 cents per 100 pounds collected by defendants for the transportation of a carload of lumber from Spring Hope, N. C., to Yardley, Pa., shipped on July 27, 1912, in G. N. car No. 124004, was unreasonable and unjustly discriminatory to the extent that it exceeded the aggregate of the intermediate rates concurrently in effect to and from Norfolk, Va. Reparation was asked.

On November 30, 1915, subsequently to the hearing and submission of the case, the parties filed a stipulation that the complaint as filed be amended to include an additional carload of lumber shipped from Spring Hope to Yardley on July 19, 1912, in N. Y. C. & H. R. car No. 102187. The claim as to this earlier shipment was first filed with the Commission July 23, 1913. After correspondence with the Atlantic Coast Line Railroad, one of the carriers concerned, we found that the matter could not be disposed of informally, and so notified complainant on November 29, 1913. Two years elapsed before the claim was again brought to our attention by the filing of the stipulation. This failure on the part of complainant must be construed as an abandonment of the claim. Rule III, Rules of Practice; *Kenefick-Quigley-Russell Construction Co. v. S. Ry. Co.*, 36 I. C. C., 324.

The car numbers appearing on the bill of lading and expense bill did not correspond, but the witness testified that both exhibits referred to the same shipment. The weight testified to was 41,000 pounds. By the stipulation the parties agreed that the correct weight

was 59,400 pounds. Charges were collected upon that weight at the published joint rate of 21 cents per 100 pounds, amounting to \$124.74.

The intermediate rates concurrently in effect on lumber in carloads to and from Norfolk were 8 cents per 100 pounds from Spring Hope to Norfolk and 11 cents from Norfolk to Yardley, a total of 19 cents per 100 pounds. Complainant's only contention is that the charges were unreasonable to the extent that they exceeded the charges which would have accrued on the basis of the intermediate rates. No other evidence was adduced to support the allegation of unjust discrimination.

The joint rate of 21 cents is still in effect, but effective May 15, 1913, the rate from Norfolk to Yardley was increased to 14 cents, thereby increasing the aggregate of intermediate rates to and from Norfolk to 22 cents. Effective February 23, 1915, the rate from Norfolk to Yardley was increased 5 per cent, to 14.7 cents. Defendants insist that the 11-cent rate formerly in effect from Norfolk to Yardley was relatively too low in comparison with the rates on lumber from Norfolk to other points in Pennsylvania and New Jersey; that it was on an improper basis, in that the published specific proportion of the joint rate from Norfolk to Yardley was 18 cents; that usually the local rate is 1 cent over the specific proportion maintained; and that the 11-cent rate was published in error. But prior to July 1, 1912, the joint rate was 19 cents, which was the sum of the intermediate rates, and the increase of the joint rate to 21 cents subsequently to the amendment on June 18, 1910, of the fourth section of the act, without any increase in either of the intermediate rates, was in violation of that section.

We find that the rate charged was unreasonable to the extent that it exceeded the aggregate of the intermediate rates concurrently in effect to and from Norfolk; that complainant made the shipment involved as described and paid and bore charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the aggregate of the 8-cent rate applicable from Spring Hope to Norfolk and the 11-cent rate applicable from Norfolk to Yardley; and that it is entitled to reparation in the sum of \$11.98, with interest from August 1, 1912. An order will be entered accordingly. As the present joint rate is lower than the aggregate of the intermediate rates to and from Norfolk, no order for the future is necessary.

HALL, Commissioner, dissents.

No. 7238.

M. CANALES

v.

**GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY
COMPANY ET AL.**

Submitted March 29, 1915. Decided January 4, 1916.

Complaint alleging that unreasonable charges were collected for the transportation of a shipment of sugar in bond from a point in Mexico, through the United States, to another point in Mexico, dismissed for want of jurisdiction.

Rufus B. Daniel for complainant.

Jno. Franklin for El Paso & Southwestern Company and El Paso & Southwestern Railroad Company of Texas.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is an individual formerly engaged in the general merchandise business at Ciudad Juarez, Mexico, and temporarily residing at El Paso, Tex. By complaint filed August 31, 1914, he alleges that, due to misrouting, unreasonable charges were imposed by defendants on a carload of piloncillo, or Mexican sugar, shipped in June, 1912, from Piedras Negras, Mexico, through Eagle Pass, Tex., to Agua Prieta, Mexico, and reconsigned at Eagle Pass to El Paso. Reparation is asked. The claim was presented to the Commission informally May 15, 1914.

The original bill of lading specified Agua Prieta as the destination, but when the car arrived at Eagle Pass complainant requested reconsignment to El Paso for the purpose of exporting the shipment to Ciudad Juarez, and customs certificates were executed for the transportation of the sugar in bond to El Paso. Despite this request defendant Galveston, Harrisburg & San Antonio Railway waybilled the shipment in accordance with the terms of the original bill of lading to Douglas, Ariz., the point within the United States nearest to Agua Prieta. The shipment moved from Eagle Pass over the Galveston, Harrisburg & San Antonio Railway, the El Paso & Southwestern Railroad, and the El Paso & Southwestern Railroad of Texas through El Paso to Douglas. Five months later, December, 1912, it was shipped back at complainant's request from Douglas to El Paso through Hachita, N. Mex. Charges were imposed

in the sum of \$950.67, as follows: \$454.58, Piedras Negras to Douglas; \$159.44, Douglas to Hachita; \$186.65, Hachita to El Paso; \$2 reconsignment charge at Hachita, and \$148 demurrage at Douglas. Reparation is claimed for the charges paid in excess of those which would have accrued for the transportation from Eagle Pass to El Paso if the shipment had moved in accordance with the shipper's instructions. An additional \$130.65 is claimed for the alleged loss of a portion of the sugar in transit. The shipment ultimately was delivered to a destination in Mexico in bond.

The overcharges in issue accrued within the United States on traffic moving from a point in Mexico through the United States to another point in Mexico. Such transportation is not embraced within the terms of the act to regulate commerce. In *U. S. v. P. & R. Ry. Co.*, 188 Fed Rep., 484, it was held that the so-called Elkins act is inapplicable to the continuous transportation of goods in bond from a foreign country through the United States to a foreign country. Following that case, in *Seymour v. M. I. & T. R. R. & S. S. Co.*, 35 I. C. C. 492, which involved alleged overcharges on shipments of sugar from Germany through New Orleans to Eagle Pass and El Paso, destined to points in Mexico, we said that—

The sugar was transported from a nonadjacent foreign country through the United States to destinations in an adjacent foreign country. We entertain no doubt that the regulatory power of Congress extends to the transportation within this country, but apparently the jurisdiction of this Commission does not.

The shipment involved is beyond our jurisdiction, although Mexico is an adjacent foreign country. An order dismissing the complaint will be entered.

87 I. C. C.

No. 7265.
H. C. HOSSAFOUS
v.
PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY.

Submitted October 18, 1915. Decided January 3, 1916.

Rate charged for the transportation of two carloads of logs from Cambridge City, Ind., to Dayton, Ohio, found to have been unreasonable. Reparation awarded.

No appearance for complainant.

P. W. Coleman for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a lumber dealer and manufacturer at Dayton, Ohio. By complaint, filed September 3, 1914, he alleges that the rates charged by defendant for the transportation of two carloads of logs from Cambridge City, Ind., to Dayton on July 12, 1912, and November 9, 1912, respectively, were unreasonable and in violation of section 4 of the act; also that the shipments were overcharged by reason of defendant's failure to make an allowance for stakes authorized by its tariffs. Reparation is asked. The claim was presented to the Commission informally June 8, 1914.

Through mistake the complainant's counsel did not attend the hearing. Defendant submitted its evidence in the form of a statement admitting all of the essential facts, including the unreasonableness of the rate attacked, and expressed willingness to pay the reparation claimed.

The shipments aggregated 106,500 pounds and freight charges were assessed in the sum of \$69.23 at the sixth-class rate of 6½ cents per 100 pounds. By defendant's line Cambridge City is directly intermediate to Dayton from Lewisville, Ind. It is about 9½ miles from Lewisville and about 57 miles from Dayton. The sixth-class rate from Lewisville to Dayton when the shipments moved was 7 cents, but there was also a commodity rate of 5 cents, limited, however, to apply on logs manufactured at Dayton when the products were shipped out over defendant's line. The tariff carrying this rate provided, in accordance with rule 77 of Tariff Circular 18-A, that upon request therefor rates from intermediate points the same as from Lewisville would be established on one day's notice. It does not appear that complainant requested the establishment of the 5-cent rate from Cambridge City before the shipments involved

moved. The 5-cent rate applied from Lewisville as early as 1910. On April 2, 1914, a 5-cent rate was established from Cambridge City. The rates from both points were increased to 5.3 cents on October 26, 1914, but on February 20, 1915, the 5-cent rate was restored.

Complainant furnished a list of numerous shipments of veneer shipped from Dayton via defendant's line between September 6, 1912, and October 7, 1915, which are said to have weighed about the same as the products of the logs here involved and similar logs, but was unable to state that the products of the particular logs involved moved out over defendant's line. Defendant also was unable to furnish such information because of the destruction of certain of its records by the Dayton flood. But we do not regard the information essential to a decision of the case. In *Red River Oil Co. v. T. & P. Ry. Co.*, 23 I. C. C., 438, and *May Bros. v. Y. & M. V. R. R. Co.*, 26 I. C. C., 323, we held that it was unreasonable for carriers to impose any additional sum as a penalty against a shipper because different carriers moved his raw material to a transit point and his manufactured product out. Moreover, effective September 15, 1913, the restriction of the 5-cent rate from Lewisville to Dayton to logs the products of which were shipped out via defendant's line was eliminated.

We find that the rate charged on the shipments involved was unreasonable to the extent that it exceeded 5 cents per 100 pounds; that complainant made the shipments involved as described and paid and bore charges thereon; that he has been damaged to the extent of the difference between the charges paid and those which would have accrued at the rate herein found reasonable and that he is entitled to an award of reparation with interest. The exact amount of reparation due can not be determined on the present record. Complainant accordingly should prepare a statement showing as to each shipment on which reparation is claimed the date of movement, points of origin and destination, car number and initials, route, weight applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainant and verified by defendant, we will consider further the entry of an order awarding reparation.

Defendant admits the overcharge of 32.5 cents per car claimed by complainant on account of its failure to make the tariff allowance for stakes and is willing to make refund without an order from the Commission. If refund is not made promptly, the matter may again be brought to our attention.

No. 7535.
BIRDSBORO STONE COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted May 10, 1915. Decided January 3, 1916.

Rates charged by defendants for the transportation of certain carload shipments of road stone from Monocacy, Pa., to various points in Delaware found to have been unreasonable. Reparation awarded.

J. R. Hoover for complainant.

Henry Wolf Biklé for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of crushed stone, with its principal office at Philadelphia, Pa. By complaint, filed December 2, 1914, as amended, it alleges that the rates charged by defendants for the transportation of numerous carloads of crushed road stone shipped from Monocacy, Pa., to various points in Delaware, during April and May, 1914, were unreasonable and unjustly discriminatory. Reparation is asked. The allegation of unjust discrimination was abandoned at the hearing.

The shipments, 45 in number, originated at Monocacy and moved over defendants' lines to the following points in Delaware: Cooch, New Castle, Farnhurst, Bear, Stanton, Newark Center, Delaware City, Mount Pleasant, Reybold, and Harrington. Charges were collected on all of the shipments at a rate of 60 cents per net ton except the shipments to Harrington, which were charged for at a rate of 80 cents per net ton. Complainant contends that these rates were unreasonable to the extent that they exceeded 45 cents and 65 cents per ton, respectively, which applied from and to the points involved prior to January 1, 1914. Tariffs filed to take effect January 1, 1914, proposing a uniform increase of 15 cents per ton for the transportation of interstate shipments of crushed road stone for road-making purposes from Port Deposit, Md., and from points in other states to destinations in Maryland and Delaware were suspended, but Pennsylvania Railroad tariff BB I. C. C. No. 611 which names the rates assailed and others, was not suspended. The increased rates that took effect were attacked as unjust and unreasonable by a complaint

filed by the protestants in the suspension proceedings. The cases involved the same evidence and were heard together. We found in those cases, *Rates on Crushed Stone*, 30 I. C. C., 22, that the proposed rates there involved had not been justified and ordered their cancellation to the extent that they involved increased rates on crushed stone from the points of origin named in the tariffs to points in the territory known as the eastern shore of Maryland, and that the increased rates published in Pennsylvania Railroad tariff BB I. C. C. No. 611 were unreasonable to the extent that they exceeded the rates in effect prior to January 1, 1914. The carriers were ordered to establish rates from the points of origin named to points of destination on the eastern shore of Maryland not in excess of the rates formerly applicable to take effect on or before June 1, 1914. The rates formerly in effect were restored, not only from the points of origin named to points of destination on the eastern shore of Maryland, but also from and to the points involved in the case at bar. The shipments involved moved during the period when the higher rates were in effect. Defendants do not admit expressly that the rates charged were unreasonable, but offered no evidence in support of their reasonableness, although the burden of proof was on them.

Following the cases cited we find upon all the facts of record that the rates assailed were unreasonable to the extent they exceeded earlier and subsequently reestablished rates from and to the same points.

Defendants contest complainant's claim for reparation. They insist that complainant had not been damaged to the extent of 15 cents per ton, the difference between the rates charged and those herein found reasonable, for the reason that complainant increased the price of its stone during the period the higher rates were in effect. The contention is without merit. *Commercial Club of Omaha v. A. & S. R. Ry. Co.*, 27 I. C. C., 302; *Ballou & Wright v. N. Y., N. H. & H. R. R. Co.*, 34 I. C. C., 120.

We find that complainant made the shipments involved as described and paid and bore charges thereon at the rates herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rates herein found reasonable and that it is entitled to reparation with interest. The exact amount of reparation due can not be determined on the present record. Complainant should prepare a statement showing as to each shipment on which reparation is claimed the date of movement, points of origin and destination, route, weight, car number and initials, rate applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of

a statement so prepared by complainant and verified by defendants we will consider further issuing an order awarding reparation.

As the rates herein found reasonable have been in effect for more than a year, no order for the future is necessary.



No. 7476.

INDIANA VENEER & LUMBER COMPANY, INCORPORATED,

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ET AL.

PORTION OF FOURTH SECTION APPLICATION No. 4219.

Submitted June 23, 1915. Decided December 28, 1915.

1. Rate of 20 cents per 100 pounds for the transportation of logs in carloads from Haynes, Ark., to Indianapolis, Ind., and rate of 23 cents per 100 pounds from McGehee, Ark., to Indianapolis not shown to have been unreasonable. Complaint dismissed.
2. Authority to continue rates on logs in carloads from Snow Lake, Ark., to St. Louis, Mo., which are lower than those concurrently applicable on like traffic from Haynes, Ark., and other intermediate points; and from Arkansas City, Ark., to St. Louis, Mo., and East St. Louis and Thebes, Ill., which are lower than those concurrently applicable on like traffic from McGehee, Ark., and other intermediate points, denied.

R. B. Coapstick for complainant.

C. C. P. Rausch for St. Louis, Iron Mountain & Southern Railway Company.

J. M. Simon for Vandalia Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of veneer and lumber, with its principal place of business at Indianapolis, Ind. By complaint filed November 10, 1914, it alleges that the rates charged by defendants for the transportation of logs in carloads from Haynes and McGehee, Ark., to Indianapolis, were unreasonable, unjustly discriminatory, and in violation of section 4 of 37 I. C. C.

the act. Reparation is asked and the establishment of reasonable rates for the future.

Ten carload shipments are involved: Four from Haynes between February 1 and July 10, 1913; six from McGehee between June 16 and July 19, 1913. Both points of origin are local to the St. Louis, Iron Mountain & Southern Railway. The shipments moved over the Iron Mountain through Thebes, Ill., to East St. Louis, Vandalia Railroad thence to Indianapolis. A through rate of 20 cents per 100 pounds was charged from Haynes; a through rate of 23 cents from McGehee.

When the first shipment from Haynes moved rates applicable to and from St. Louis aggregated 24 cents per 100 pounds: 16 cents to St. Louis, 8 cents beyond. Effective February 3, 1913, the rate to St. Louis was reduced to 13 cents, making the combination rate 21 cents, which rate was in force when the three remaining shipments from Haynes moved. Snow Lake is 65 miles south of Haynes on the same line. The combination rate, Snow Lake to Indianapolis, through Haynes and St. Louis, was 19 cents: 11 cents to St. Louis, 8 cents beyond. The combination rate on logs from McGehee to Indianapolis through St. Louis was 24 cents: 16 cents to St. Louis, 8 cents beyond. Arkansas City is 12 miles southeast of McGehee on the same line. The combination rate from Arkansas City to Indianapolis through St. Louis was 20 cents: 12 cents to St. Louis, 8 cents beyond. The present rate is 20.5 cents. The deviations from the long-and-short-haul rule of the fourth section constitute the only evidence adduced to support the allegations that the rates assailed also were unreasonable and unjustly discriminatory.

That portion of Fourth Section Application No. 4219 which seeks authority to continue rates on logs in carloads from Snow Lake, Ark., to St. Louis, Mo., lower than the rates concurrently maintained from Haynes and other intermediate points and from Arkansas City, Ark., to St. Louis, lower than the rates concurrently maintained from McGehee and other intermediate points, was heard with the complaint. It developed at the hearing that lower rates also were maintained on like traffic from Arkansas City to Thebes and East St. Louis, Ill., than from McGehee. This adjustment was not set for hearing, but the Iron Mountain has since waived formal hearing and has agreed to the consideration of this adjustment on the evidence offered to justify the adjustment to St. Louis.

Haynes is 50 miles from the Mississippi River, Snow Lake 8 miles, McGehee 12 miles. Arkansas City is on the river. Defendants state that the rates from Snow Lake and Arkansas City are influenced by river competition which decreases in effect as distances inland increase. But no specific and definite evidence is adduced to

support the statement. Defendants fail to show that Snow Lake and Arkansas City are actually water competitive points, and that the conditions of the traffic from Haynes and McGehee are substantially dissimilar. The fourth section relief asked will be denied.

Complainant, on the other hand, fails to establish that the rates assailed were intrinsically unreasonable. Complainant compares the rates to St. Louis from Haynes and McGehee with the rates from Snow Lake and Arkansas City on the basis of the relative ton-mile earnings; but this is not enough. Complainant also maintains that the Vandalia Railroad provides a dunnage allowance of 500 pounds on logs in flat cars, and that dunnage should have been allowed on the shipments involved from East St. Louis to Indianapolis. But the tariffs governing the shipments made no provision for dunnage on logs in carloads, and the record does not disclose that the absence of such a provision resulted in the assessment of unreasonable charges.

We find upon all the facts disclosed that the rates assailed are not shown to have been unreasonable or unjustly discriminatory.

Appropriate orders will be entered dismissing the complaint and denying relief under the fourth section application.

No. 7526.
J. M. SKINNER BENDING COMPANY
v.
TOLEDO, ST. LOUIS & WESTERN RAILROAD COMPANY
ET AL.

Submitted September 17, 1915. Decided January 3, 1916.

Claim for reparation denied because formal complaint filed more than two years after the claim accrued was not filed within a reasonable time after a timely informal complaint was withdrawn.

R. B. Coapstick for complainant.

William Burger for Louisville & Nashville Railroad Company

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of wooden wagon material, with its principal office at Toledo, Ohio. By complaint, filed November 30, 1914, it alleges that the rate charged by defendants for the transportation of four carloads of wagon felloes in the rough in August, 1909, and October, 1909, from Toledo, Ohio, to Louisville, Ky., was unreasonable. Reparation is asked.

The claim was presented to the Commission informally by the Toledo, St. Louis & Western Railroad Company on June 21, 1911. On October 9, 1911, the Commission was advised that complainant desired to file a formal complaint, and on October 19, 1911, information was furnished to complainant to facilitate the preparation of the complaint, but the complaint was not filed until November 30, 1914.

We find that complainant failed to file its formal complaint within a reasonable time after the withdrawal of the informal complaint in October, 1911, and thereby abandoned its claim. Following *Dillon Coal & Transfer Co. v. O. S. L. R. R. Co.*, 28 I. C. C., 91, and *Palen & Burns v. L. V. R. R. Co.*, Docket No. 4784, unreported, the complaint will be dismissed.

No. 7551.
BRADLEY TIMBER & RAILWAY SUPPLY COMPANY
v.
CANADIAN NORTHERN RAILWAY COMPANY ET AL.

Submitted September 15, 1915. Decided January 3, 1916.

Rate of 27 cents per 100 pounds for the transportation of a carload of lumber from Beaudette, Minn., to Vincennes, Ind., not found to have been unreasonable. Complaint dismissed.

V. A. Anderson for complainant.

George Stephen for Canadian Northern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation dealing in lumber at Duluth, Minn. By complaint, filed November 26, 1914, it alleges that defendants' rate of 27 cents per 100 pounds for the transportation of a carload of lumber shipped from Beaudette, Minn., to Vincennes, Ind., February 18, 1913, was unreasonable to the extent that it exceeded 26 cents per 100 pounds. Reparation is asked.

The shipment weighed 33,900 pounds and charges were collected in the sum of \$91.53 at the 27-cent rate assailed. Effective April 1, 1913, defendants voluntarily established a rate of 26 cents. Previous to that date the rate from Beaudette to Chicago had been reduced by 1 cent per 100 pounds; and it is because the through rate from Beaudette to Vincennes was not reduced equally at the same time that this complaint was filed.

For a number of years the rate to Vincennes had been made with some regard to the rate to Chicago. When the rate to Chicago was reduced the rate to Vincennes still was lower than the combination of the intermediate rates to and from Chicago by one-half cent per 100 pounds. Effective November 16, 1913, the rate to Vincennes was increased to 26½ cents. Complainant adduced no evidence relative to the unreasonableness of the rate assailed other than the changes in the rates to Chicago and Vincennes just described.

We find that the rate charged is not shown to have been unreasonable, and an order dismissing the complaint will be entered.

No. 7552.
HOUSTON PACKING COMPANY
v.
**INTERNATIONAL & GREAT NORTHERN RAILWAY
COMPANY ET AL.**

Submitted April 30, 1915. Decided January 3, 1916.

Defendants' rate for the transportation of packing-house products in carloads from Houston, Tex., to New Orleans, La., not found unreasonable or unjustly discriminatory. Complaint dismissed.

Joe Hutcheson, jr., and Hutcheson & Hutcheson for complainant. F. H. Wood, Denegre, Leovy & Chaffe, Baker, Potts, Parker & Garwood, and J. R. Christian for Texas & New Orleans Railroad Company, Morgan's Louisiana & Texas Railroad & Steamship Company, and Louisiana Western Railroad Company.

L. M. Hogsett for Texas & Pacific Railway Company and International & Great Northern Railway Company.

Albert H. & Henry Veeder, R. C. McManus, R. D. Rynder, and C. B. McKiernan for Swift & Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation, with its principal offices at Houston, Tex. By complaint, filed December 5, 1914, it alleges that the rate of 36 cents per 100 pounds charged by defendants for the transportation of packing-house products in carloads from Houston to New Orleans, La., is unreasonable, unjustly discriminatory, and unduly preferential of New Orleans competitors who have a rate of 33 cents on like traffic from New Orleans to Houston.

The 36-cent rate from Houston to New Orleans conforms to the basis of rates prescribed in *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160. It was attacked in *Houston Packing Co. v. T. & N. O. R. R. Co.*, 22 I. C. C., 456, but was not shown to be unreasonable, although we observed that it exceeded the class rate. Complainant's only evidence that it is unreasonable is the lower rate applicable in the opposite direction.

After the complaint was filed defendants filed tariffs proposing to increase the rate from New Orleans to Houston to 36 cents in order to remove the alleged discrimination. The proposal was protested

by complainant and the tariffs were suspended pending the determination of the *1915 Western Rate Advance Case*, 35 I. C. C., 497. The particular rates here involved are not discussed in our report in that case, but the proposed increased rates on packing-house products that were involved were found in general not to have been justified.

Complainant admits that there are no general meat-packing houses in New Orleans that compete with it in marketing packing-house products, which admission renders the allegation of discrimination groundless. *Board of Trade of Chicago v. A., T. & S. F. Ry. Co.*, 29 I. C. C., 438.

Complainant states that there are three or more refineries in New Orleans that manufacture lard compounds and cooking oils shipped in competition with complainant's product of lard compound made of cottonseed oil, and that the refineries at New Orleans ship to Houston, while complainant ships its products to New Orleans. A specific rate of 24 cents applies on lard substitutes in carloads from Houston to New Orleans; a rate of 26 cents from New Orleans to Houston. The carload rate of 24 cents applicable on complainant's shipments of lard compound is not attacked. As complainant makes its shipments, lard substitutes may be mixed in carloads with packing-house products at the carload rate applicable on packing-house products. The same is true for shipments in the opposite direction, but it is not in evidence whether complainant's competitors at New Orleans make carload or less-than-carload shipments of lard substitutes to Houston; neither is the extent of the movement in either direction shown.

We find that the rate assailed is not shown to be unreasonable or unjustly discriminatory, and the complaint will be dismissed.

37 I. C. C.

No. 7574.
L. L. BROWN PAPER COMPANY
v.
BOSTON & ALBANY RAILROAD COMPANY ET AL.

Submitted June 23, 1915. Decided January 3, 1916.

Defendants' combination less-than-carload rate on writing paper from Adams, Mass., to Philadelphia, Pa., routed by way of Sixtieth street, New York City, not shown to be unreasonable or unduly prejudicial. Complaint dismissed.

O. M. Rogers for complainant.

G. H. Fernald, jr., and *R. Van Ummersen* for Boston & Albany Railroad Company.

R. Van Ummersen for New York Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of ledger and record paper, with its principal place of business at Adams, Mass. By complaint, filed December 14, 1914, it alleges that defendants' combination less-than-carload rate on writing paper from Adams to Philadelphia, Pa., is unreasonable and unduly prejudicial. Reparation is asked on numerous shipments, alleged to have been made on and subsequently to May 29, 1912, and a reasonable joint rate over the route traversed by the shipments involved. The claim was presented to the Commission informally May 21, 1914.

Adams is a local station on the Boston & Albany Railroad. The shipments were moved by the Boston & Albany to Chatham, N. Y., and by the New York Central & Hudson River Railroad, now the New York Central Railroad, from Chatham to Sixtieth street, New York City, where they were turned over to the Pennsylvania Railroad, which moved them to Philadelphia and delivered them. A rate of 31 cents per 100 pounds was charged, composed of a commodity rate of 16 cents to New York City and the third-class rate of 15 cents governed by official classification, thence to Philadelphia. The commodity rate to New York has since been increased to the level of the class rate from Adams to New York, 20 cents. The 15-cent rate from New York to Philadelphia has been increased 5 per cent.

Four other routes were and still are available for traffic of the kind involved at joint commodity rates, as follows:

(1) Boston & Albany to Albany, West Shore Railroad thence through Sterling Junction (National Junction) or Weehawken, N. J., to Jersey City, Central Railroad of New Jersey thence to Bound Brook, N. J., and Philadelphia & Reading thence to destination.

(2) Boston & Albany to Albany, Delaware & Hudson thence to Wilkes-Barre, Pa., Pennsylvania Railroad thence to destination.

(3) Boston & Albany to Albany, Delaware & Hudson thence to Wilkes-Barre, and Central Railroad of New Jersey or Lehigh Valley and Philadelphia & Reading thence to destination.

(4) Boston & Albany to Boston, Merchants & Miners Transportation Company thence to destination.

Philadelphia is 262.2 miles from Adams over the route of movement, 300.5 miles over the route through Weehawken, and an average distance of about 430 miles over the routes through Wilkes-Barre. A joint rate of 19 cents was applicable over all of these routes except the route of movement, which has since been increased to 22 cents.

Transportation from Adams to Philadelphia consumes about three days by way of Sixtieth street, New York City, and an average of about one week by way of Wilkes-Barre or by the rail-and-water route described. Complainant desires the service rendered over the expeditious route and the rate applicable over the slow routes, but gives as a further reason for routing the shipments involved by way of Sixtieth street, New York City, that the consignees requested Pennsylvania Railroad delivery.

Defendants explain that the joint rates described from Adams to Philadelphia were established and are maintained by the Boston & Albany to enable paper makers on its line to compete with paper makers served by the New York, New Haven & Hartford Railroad. The former 19-cent rate equaled the third-class rate from Hartford to Philadelphia and the present 22-cent rate equals the present third-class rate from Hartford to Philadelphia. The third-class rate from Adams was formerly 25 cents and is now 27.5 cents. Transportation by way of Sixtieth street, New York City, is said to entail considerable extra expense, because of the necessary transfer from Manhattan Island to the New Jersey shore, and joint rates are not carried through Sixtieth street, particularly on less-than-carload freight, because of this expense and the congestion of the New York terminal. The Boston & Albany has established fast freight service to New York, but essentially for New York business and not for traffic for beyond, although some shippers prefer the service to and from New York, even at the combination rates applicable.

Complainant cites joint rates by way of New York City on packing-house products from Massachusetts points to Philadelphia, but defendants explain that these rates were established because packing-house products are perishable and require expedited service. A less-than-carload joint rate of 31 cents on writing paper from Adams to Richmond, Va., subsequently increased 5 per cent, is cited also, Richmond being 513 miles from Adams by way of New York City. This rate is said to be water compelled and to be beyond defendants' control. Class rates and various commodity rates apply from Philadelphia to certain New York Central points by way of New York City, while certain traffic from Adams to Delaware, Lackawanna & Western points also may be routed through New York City. Defendants' explanation of these rates is not entirely clear, but apparently routing through New York is necessary to enable defendants to retain the traffic on their lines or because no other routes including their lines are available or practical. Complainant formerly used the Wilkes-Barre route, and for the past two years has shipped by the rail-and-water route, except for occasional shipments through New York City. The rail-and-water route was brought to complainant's attention by the officers of the water carrier. Complainant has not known of the Weehawken route and has never tried it. The Weehawken route is only 38 miles longer than the route through New York City and only one more carrier participates. Complainant's traffic representative admitted that the Weehawken route probably would consume only one day more than the route through New York City. The route by way of Sixtieth street, New York, is and has been open to complainant and at rates which we find have not been shown to have been or to be unreasonable or unduly prejudicial. See *Birge-Forbes Co. v. M., K. & T. Ry. Co.*, 28 I. C. C., 409-411.

The shipments involved were routed in the billing "P. R. R." and complainant's representative stated at the hearing that the complaint had been brought on the theory that the shipments had been misrouted. It appears, however, that the traffic was forwarded by way of New York City at complainant's personal direction and moved by the route intended. It follows that the shipments were not misrouted.

An order will be entered dismissing the complaint.

27 I. C. C.

No. 7580.

NEW MONARCH MACHINE & STAMPING COMPANY
v.
INDIANA HARBOR BELT RAILROAD COMPANY ET AL.

Submitted August 21, 1915. Decided January 3, 1916.

Rates applicable to the transportation of straight iron rods, round, with threaded ends, from Indiana Harbor, Ind., to Des Moines, Iowa, not found unreasonable or unjustly discriminatory. Complaint dismissed.

F. W. Knoche for complainant.

George Carr for Chicago Great Western Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of iron products at Des Moines, Iowa. By complaint, filed December 9, 1914, as amended, it alleges that the rate charged by defendants for the transportation of one carload of silo bands shipped April 4, 1914, from Indiana Harbor, Ind., to Des Moines, was unreasonable and unjustly discriminatory. Reparation is asked and the establishment of a reasonable rate for the future.

The shipment weighed 35,300 pounds and was moved by the Indiana Harbor Belt Railroad and the Chicago Great Western Railroad, billed as silo bands and nuts. It consisted of straight iron rods, round, with threaded ends, and four kegs of nuts. The rods actually became silo bands only after the transportation had terminated, when they were bent, painted, fastened together and tightened around silo staves. At first, charges were collected by defendants and borne by complainant in the sum of \$56.48 on 35,300 pounds at a commodity rate of 16 cents per 100 pounds. Subsequently, defendants collected \$1.12 additional on the basis of a minimum weight of 36,000 pounds.

The western classification in effect when the shipment moved rated iron rods, headed or threaded, or headed and threaded, with nuts and washers, in carloads, minimum 36,000 pounds, fifth class. The fifth-class rate from Chicago to Des Moines was 21 cents per 100 pounds. The 16-cent commodity rate charged was applicable on bar or band iron. The term bar iron did not cover bars that had been threaded.

Complainant admits that the rods shipped were not band iron. The western classification also provided a class D rating on—

Silo material, consisting of staves or lumber, cut to length, tongued and grooved, silo hoops or bands and silo doors and frames, in packages or loose, straight or mixed carload, minimum weight 30,000 pounds.

The class D rate from Indiana Harbor to Des Moines was 14 cents per 100 pounds. Complainant contends that this rating and rate should have applied for the reason apparently that the rods shipped were used subsequently in the manufacture of silos. The rate legally applicable was 21 cents per 100 pounds, and the shipment therefore was undercharged \$18.

The discrimination alleged is predicated on the publication of sectional tariffs by certain carriers in accordance with rule 7(b) of Tariff Circular 18-A, that provided for the alternative use of class and commodity rates, whichever made lower to points beyond Des Moines and certain other points. There was no commodity rate on threaded iron rods from Indiana Harbor to Des Moines and the record discloses no fair basis for requiring the establishment of a commodity rate on iron rods.

We find that the rate legally applicable is not shown to have been unreasonable or unjustly discriminatory, and the complaint will be dismissed.

87 I. C. C.

No. 6924.
ISAAC JOSEPH IRON COMPANY
v.
MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAM-
SHIP COMPANY ET AL.

FOURTH SECTION APPLICATION NO. 461.

Submitted December 23, 1914. Decided November 2, 1915.

Joint through rate of 30 cents per 100 pounds on scrap iron from Houston, Tex., through New Orleans, La., to Chicago, Ill., found to have been unreasonable to the extent that it exceeded the sum of the intermediate rates contemporaneously in effect. Fourth section application denied. Reparation awarded.

H. C. Barnes, Ellis & Donaldson, and C. E. Cotterill for complainant.

Denegre, Leovy & Chaffe; Baker, Botts, Parker & Garwood; and F. H. Wood for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in buying and selling scrap iron at Cincinnati, Ohio. By complaint, filed May 14, 1914, it attacks as unreasonable and unjustly discriminatory a joint through rate of 30 cents per 100 pounds charged by defendants on certain carload shipments of scrap iron from Houston, Tex., to Chicago, Ill. Reparation is asked.

All of the shipments moved during October and November, 1912, and a joint through carload rate of 30 cents per 100 pounds was charged. A proportional rate of 9½ cents per 100 pounds in carloads was concurrently in effect from Houston to New Orleans "when destined to points beyond to which no through rates are published," and a rate of \$3.31 per net ton in carloads from New Orleans to Chicago. As all of the shipments moved through New Orleans and the rate charged exceeded a combination rate based on the intermediate rates to and from New Orleans, referred to, by 79 cents per ton, complainant contends that the fourth section of the act was violated. That part of agent Leland's Fourth Section Application No. 461 which seeks authority to continue through rates on scrap iron from

Houston to Chicago higher than the sum of the intermediate rates based on New Orleans was set for hearing with the complaint.

Defendants contend that the proportional rate of 9½ cents per 100 pounds from Houston to New Orleans was not and is not available as a factor in a combination rate on New Orleans, and if correct in this contention do not ask authority to continue higher through rates from Houston to Chicago than the aggregate of intermediate rates based on New Orleans. They therefore introduced no evidence relative to the fourth section application.

Some explanation was offered of the origin and reason for the proportional rate from Houston to New Orleans, and it was testified that the present rate of 9½ cents was increased from 7½ cents some years ago. It further appears that the rate of \$3.31 per ton from New Orleans to Chicago was increased to 20 cents per 100 pounds about one year ago. We hold that the 9½-cent proportional rate was not so restricted or limited as to make it inapplicable as a factor in constructing a through rate to Chicago had there been no joint rate in effect. We find upon consideration of all the facts that the joint through rate of 30 cents per 100 pounds was unreasonable to the extent that it exceeded the combination of intermediate rates concurrently in effect, i. e., \$5.21 per ton. No order fixing a specific rate for the future will be made at this time, but the application for authority to continue to charge higher through rates from Houston, through New Orleans, to Chicago, than the aggregate of the intermediate rates contemporaneously in effect via defendants' lines through New Orleans will be denied. We further find that complainant made the shipments in question and paid charges thereon at the rate therein found to have been unreasonable, that it was damaged to the extent of the difference between the amounts paid and the amounts that would have accrued had the rate which it is herein found would have been reasonable been in effect, and that it is therefore entitled to an award of reparation in the sum of \$682.34, which includes an overcharge of 30 cents, with interest from December 6, 1912.

Appropriate orders will be entered.

37 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 626.
CRUSHED STONE FROM WISCONSIN POINTS.

Submitted July 2, 1915. Decided January 11, 1916.

1. Proposed increased carload rate on crushed stone from Ives and Racine, Wis., to Chicago, Ill., and Chicago district points, found to have been justified.
2. Proposed increased carload rate on crushed stone from Waukesha, Wis., to Chicago, and straight or mixed carload rate on crushed stone, grout, sand, and gravel from Waukesha and Burlington, Wis., to Chicago, found not to have been justified.

R. H. Widdicombe for Chicago & North Western Railway Company.
C. A. Klotz for Universal Crushed Stone Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This proceeding involves the propriety of certain proposed rates on crushed stone in carloads and on crushed stone, grout or broken stone, sand, and gravel, in straight or mixed carloads, which were filed to take effect April 15, 1915, and June 15 and 16, 1915. Supplement No. 13 to Chicago & North Western Railway tariff I. C. C. No. 7290 proposed to increase the rate on crushed stone in carloads from Ives and Racine, Wis., to Chicago, Ill., and Chicago district points from 1½ cents per 100 pounds to 2 cents. An item contained in supplement No. 16 to the same tariff proposed to increase the rate on crushed stone in carloads from Waukesha, Wis., to Chicago from 2 cents per 100 pounds to 2½ cents. Minneapolis, St. Paul & Sault Ste. Marie Railway tariffs I. C. C. Nos. 3551 and 3630 proposed to increase the rates on crushed stone and grout in carloads from Waukesha and Burlington, Wis., to Chicago from 2 cents per 100 pounds to 2½ cents; the rates on sand and gravel from 1½ cents per 100 pounds to 2½ cents; the rates on mixed carloads of crushed stone, grout, sand, or gravel from 2 cents per 100 pounds to 2½ cents. Upon protest by the Universal Crushed Stone Company, of Chicago, which has quarries in Racine county, Wis., and by the Waukesha Lime & Stone Company, the schedules were suspended until August 13, 1915, and subsequently to February 13, 1916.

Rates on the commodities here involved are dependent upon whether or not the points on respondents' lines are within the grouped so-called inner or outer zone; the former comprising, in the main, that part of Illinois north of Chicago, the latter Wisconsin origins. We found in *Rates on Sand and Gravel*, 24 I. C. C.,

249, that a proposed increase in the rate on sand and gravel from outer zone points in Wisconsin to Chicago and Chicago district points from $1\frac{1}{2}$ cents per 100 pounds to 3 cents was not justified, and that a differential of one-fourth cent per 100 pounds over the inner zone rate on sand and gravel, voluntarily established and maintained by the carriers for a number of years, was the proper basis for a rate from the outer zone. The intrastate rate of 2 cents per 100 pounds concurrently proposed apparently was condemned by the Illinois state commission. In *Waukesha Lime & Stone Co. v. C., M. & St. P. Ry. Co.*, 26 I. C. C., 515, we found further that, because of lighter loading and greater value, crushed stone might properly take a rate slightly higher than sand and gravel, and prescribed carload rates of $1\frac{1}{2}$ cents per 100 pounds on sand and gravel and 2 cents per 100 pounds on crushed stone from Waukesha to Chicago to apply for a period of two years from June 15, 1913. The proposed increased rate on crushed stone from Waukesha to Chicago now before us is part of a proposed general adjustment whereby the Chicago & North Western sought to increase the differential on sand and gravel from outer zone points one-half cent per 100 pounds over inner zone points and to abolish the differential on crushed stone over sand and gravel from the outer zone by placing these commodities on an equal rate basis. The increases proposed for sand and gravel under this general adjustment were suspended and considered in *Sand and Gravel Rates from Wisconsin Points*, 34 I. C. C., 467, where we found that the rates on sand and gravel were undoubtedly low in comparison with the rates on the same commodities for similar distances elsewhere, and that slight increases might be warranted, provided the long standing relationship between the rates from the inner and outer zones should not be disturbed. Following the order entered in that case the Chicago & North Western, on September 1, 1915, canceled the tariff carrying the proposed increases, thereby restoring the rates sought to be increased. The proposed increase in the rates on crushed stone was predicated on the increases in the rates on sand and gravel, but because of the outstanding order in the *Waukesha Lime & Stone Co. case, supra*, the publication of the proposed rates from Waukesha was delayed.

Prior to March 15, 1915, when it was reduced to $1\frac{1}{2}$ cents per 100 pounds, the rate on crushed stone in carloads from Ives and Racine to Chicago and Chicago district points over the Chicago & North Western was 2 cents. One of the schedules under suspension seeks to reestablish the 2-cent rate. Respondent states that its reduction to $1\frac{1}{2}$ cents was due to a misunderstanding and that it had contemplated requesting the restoration of the 2-cent rate on less than statutory notice. The evidence indicates, however, that it was tem-

porarily established by the Chicago & North Western in order to put the Universal Crushed Stone Company on a rate equality with shippers of sand and gravel at other points. That protestant objects to the restoration of the 2-cent rate, contending that crushed stone, sand, and gravel compete and that the maintenance of a differential on crushed stone over sand and gravel is unreasonable and would exclude protestant from the Chicago market. The rate on sand and gravel from Ives and Racine is 2 cents per 100 pounds and on the basis of the differential prescribed in the *Waukesha Lime & Stone Co. case, supra*, the rate on crushed stone, based on the existing rate on sand and gravel, would be 2½ cents. Respondent offers practically the same comparisons in support of the proposed increases involved as were offered in support of the increases proposed in *Sand and Gravel Rates from Wisconsin Points, supra*, and no material changes in transportation conditions are shown that would warrant the condemnation of the differential on crushed stone over sand and gravel previously prescribed. The Minneapolis, St. Paul & Sault Ste. Marie Railway makes no attempt to sustain its burden of establishing the propriety of the rates which its tariffs propose.

We find that respondents have justified the proposed increased rates involved from Ives and Racine to Chicago and Chicago district points, but have not justified the proposed increases from Waukesha and Burlington.

An order will be entered requiring the cancellation of the rates herein found not justified. The suspension of the rates found justified will be vacated.

INVESTIGATION AND SUSPENSION DOCKET No. 645.
LUMBER RATES FROM NEWCASTLE, CAL.

Submitted August 2, 1915. Decided January 3, 1916.

Proposed increased rates for the transportation of lumber in carloads from Newcastle, Cal., to points on respondent's line between Reno, Nev., and Ogden, Utah, found not to have been justified.

G. D. Squires for respondent.

Seth Mann and *F. T. Westfall* for protestants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules filed to take effect May 25, 1915, respondent, Southern Pacific Company, proposes to increase rates on lumber in carloads from Newcastle, Cal., to points on its line between Reno, Nev., and Ogden, Utah, including Ogden. The present rates are commodity rates, and it is proposed to cancel them and not to publish any specific commodity rates from Newcastle. Commodity rates from Sacramento, which are higher, are to apply from Newcastle, which is intermediate. Upon protest by lumber shippers of San Francisco the schedules were suspended until September 22, 1915, and later until March 22, 1916.

The present rates range from \$4.30 per ton at Derby, Nev., just east of Reno, to \$6.30 per ton at Ogden, Utah; the rates proposed, from \$5.20 at Derby to \$8 at Ogden. The distances range from 150 miles to 663 miles. Commodity rates were established from Newcastle some years ago, when considerable milling was done there and in that vicinity. No milling is done there now, and apparently there is no local movement outbound. The specific through rates from San Francisco to the destinations involved are higher than the aggregates of the intermediate rates to and from Newcastle, and protestants object to the withdrawal of the present rates from Newcastle because it will deprive them of the opportunity of shipping to Newcastle and of reconsigning their shipments at that point, whereby they defeat the through rates. Protestants have no other interest in the rates from Newcastle.

Rates on lumber from Newcastle, New England Mills, Colfax, and Gold Run, Cal., to points east of the California-Nevada state line to and including Reno were involved in *California-Nevada Lumber Rates*, 28 I. C. C., 313. Proposed increased rates were found not to

have been justified. The specific through rates there involved from San Francisco and other points exceeded the aggregates of the intermediate commodity rates. The case was reargued, but we reiterated our refusal to permit the disturbance of the effective rates. 31 I. C. C., 464. The parties regard the instant case as in effect a second reargument of the earlier case.

Respondent compared the present and proposed rates from Newcastle with the rates on lumber from San Pedro, Cal., to points in Arizona and New Mexico ranging from \$6.20 to \$8 per ton for distances ranging from 279 to 781 miles, but did not attempt to show a substantial similarity of conditions. It seems to rely mainly upon the fact that there is little or no movement from Newcastle locally on the present rates and the fact that these rates are factors in a combination which is being used to defeat the specific through rates from San Francisco and other points. These are not facts upon which we may find proposed rates to be just and reasonable. In cases where shippers attempt unlawfully to defeat through rates the duty is upon the carriers to apply the through rates. See *Kanotex Refining Co. v. A., T. & S. F. Ry. Co.*, 34 I. C. C., 271.

Ordinarily we would not require a carrier to maintain commodity rates from points at which no traffic originates, but in this case the rates which would be left to apply on such occasional shipments as might originate at Newcastle would in our view be excessive. Upon consideration of all the facts of record we are of opinion and find that the proposed rates have not been justified, and an order will be entered requiring their cancellation.

No. 7024.
TOPEKA TRAFFIC ASSOCIATION
v.
AHNAPEE & WESTERN RAILWAY COMPANY ET AL

Submitted January 4, 1915. Decided December 28, 1915.

Rates on potatoes in carloads from Wisconsin, Michigan, Minnesota, North Dakota, and South Dakota producing territory to Topeka, Kans., found to be unreasonable and unjustly discriminatory. Reasonable maximum rates prescribed.

H. D. Driscoll for complainant.

T. J. Norton and *A. A. Hurd* for Atchison, Topeka & Santa Fe Railway Company.

W. F. Dickinson for Chicago, Rock Island & Pacific Railway Company.

H. G. Herbel and *Fred G. Wright* for Missouri Pacific Railway Company.

Thomas Bond for St. Louis & San Francisco Railroad Company and others.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a voluntary traffic organization with headquarters at Topeka, Kans. By complaint, filed June 17, 1914, on behalf of members engaged in shipping potatoes, in carloads, to Topeka from the Wisconsin, Michigan, Minnesota, North Dakota, and South Dakota points named in Hosmer's tariffs I. C. C. Nos. A-338 and A-397, it alleges that the rates maintained on potatoes in carloads from these points of origin to Topeka are unreasonable and unjustly discriminatory in comparison with the rates concurrently applicable from the same points of origin to Kansas City, Mo., and other commercial centers in the same territory. Reasonable rates are asked.

Topeka is an important potato distributing point for the surrounding territory and is served by the Union Pacific Railroad; the Chicago, Rock Island & Pacific Railway; the Atchison, Topeka & Santa Fe Railway; and the Missouri Pacific Railway. By the direct lines it is 67 miles west of Kansas City, 50 miles southwest of Atchison, Kans., and 71 miles south of St. Joseph, Mo. These are important jobbing points on the Missouri River in keen competition

with Topeka and have rates on potatoes from the producing points involved from 7 cents to 8 cents per 100 pounds lower than the rates to Topeka, which in general are joint through rates 1 cent per 100 pounds less than the Kansas City combination.

The points of origin are grouped into 16 groups for shipment to Topeka. Groups 1, J, K, and L take the same rate, 32 cents per 100 pounds, and the rates from the other groups are made certain differentials over or under the rate from groups 1, J, K, and L. Complainant and defendant confine their evidence and arguments to the primary rate from groups 1, J, K, and L, and we shall call these groups Wisconsin territory. No joint rates apply from the western Minnesota points involved or from the points involved in extreme northwestern Wisconsin and Dakota, known as the Red River district. The lowest combinations make on Kansas City.

Complaint is made that the rates from the Wisconsin territory are intrinsically unreasonable, and that the rates from Wisconsin territory and from the Red River district are unjustly discriminatory in comparison with the rates from the same points to Kansas City. Complainant contends that rates to Topeka should not exceed the rates to Kansas City by more than 3 cents per 100 pounds. The primary rate involved is 5 cents per 100 pounds higher than the class C rate applicable to potatoes in carloads under the western classification.

The same general question was presented in Docket No. 5464, *Murphey Co. v. C., M. & St. P. Ry. Co.*, unreported, which involved the reasonableness of the carload rates on potatoes from Wisconsin points to destinations in Illinois, Kansas, and adjoining states, including the rates to Topeka. It was shown in that case that all points in a considerable territory, including a large part of Wisconsin, take Chicago rates on nearly every commodity to all of the points of destination involved except the nearest points. Potatoes are excepted from the general rule and are made slightly higher than the class C rates applicable from Chicago and grouped points because potatoes move only from the farthest corner of the group. We said:

Group rates are made with reference to the average distance from all points within the group, and we have repeatedly said that in passing upon the reasonableness of a blanket rate we must offset the rate from or to the nearer point against that from or to the more distant point * * *. If from the Wisconsin origin points the Chicago class C rates were to be applied on potatoes as on other class C commodities, shipments of potatoes from the Chicago group to any of the destinations involved in these cases would pay for a considerably longer average haul only the same average rate as other commodities similarly classified. That is a situation which ought not to be forced upon the carriers, and which they were, in our opinion, justified in avoiding by the establishment of the commodity rates.

The rates to Kansas City and Topeka from representative producing points, with distances and the percentage excess of the rates and distances to Topeka over Kansas City, are as follows, rates stated in cents per 100 pounds:

From—	To Kansas City.		To Topeka.		Topeka mileage over Kansas City.		Topeka rates over Kansas City.	
	Miles.	Rate.	Miles.	Rate.	Miles.	Per cent.	Rate.	Per cent.
Wisconsin territory:								
Shiocton, Wis.....	658	25	725	32	67	10.18	7	28
New London, Wis.....	650	25	717	32	67	10.30	7	28
Portage, Wis.....	631	25	699	32	67	10.62	7	28
Altoona, Wis.....	593	25	660	32	67	11.30	7	28
Stevens Point, Wis.....	703	25	770	32	67	9.53	7	28
Waupaca, Wis.....	678	25	745	32	67	9.88	7	28
Isanti, Minn.....	530	24	597	32	67	12.64	8	32.28
Bethel, Minn.....	524	24	591	32	67	12.79	8	32.28
Andover, Minn.....	512	24	579	32	67	12.68	8	32.28
Red River district:								
Nielsville, Minn.....	728	27	795	35	67	9.2	8	29.1
Baker, Minn.....	697	26	764	34	67	9.61	8	29.1
Crookston, Minn.....	750	27	817	35	67	8.93	8	29.1
Brainerd, Minn.....	643	25	710	33	67	10.41	8	32.3
Fargo, N. Dak.....	683	26	750	34	67	9.8	8	29.1
La Moure, N. Dak.....	771	29	838	37	67	8.69	8	27.1

The total distances from the points of origin to destinations are considerable and the difference in distance to Topeka and to Kansas City is small in comparison. A single commodity is involved and the traffic in this commodity to Topeka from the producing territories is placed at about 600 cars annually. Complainant asserts that the present adjustment enables competitors located at Missouri River points, and especially at Kansas City, to invade the market territory naturally tributary to Topeka, but defendants reply that although Kansas City dealers once had a slight advantage over dealers in Topeka in the distribution of potatoes in Kansas their advantage was nullified in 1912 by the establishment of certain reshipping rates from Topeka on the basis of 7 cents less than the rates from Kansas City, with 5 cents per 100 pounds as a minimum. These reshipping rates apply on potatoes originating east of Kansas City. St. Joseph, Atchison, and Leavenworth, Kans., and are said to have effected a complete equalization except where the 5-cent minimum is applied, as the inbound rates to Topeka in no case were more than 7 cents higher than the rates to Kansas City. But these reshipping rates do not apply to all points in Topeka jobbing territory; they apply generally to points in western Kansas. South and east of the line of the Santa Fe through Emporia and Eureka, Kans., Kansas City dealers have a decided advantage, as the rates from Topeka and Kansas City to this territory are identical. Defendants insist that any material reductions in the rates to Topeka

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would give Topeka an advantage ranging from 3 cents to 5 cents per 100 pounds to points in western Kansas, as the intrastate reshipping rates now in effect from Topeka could not be canceled or increased without the permission of the Public Utilities Commission of Kansas. But we are only concerned here with the inbound rates to Kansas City and Topeka. Numerous exhibits are submitted by both parties which have been considered, but which need not be discussed in detail.

We find upon all of the facts disclosed that the rates assailed are unreasonable and unjustly discriminatory as compared to the rates from the same points of origin to competing jobbing points in the general vicinity of Topeka, particularly Kansas City, and that for the future the rates on potatoes in carloads from points of origin named in Hosmer's tariffs I. C. C. Nos. A-338 and A-397 to Topeka should not exceed the rates from the same points to Kansas City by more than 4 cents per 100 pounds.

An appropriate order will be entered.

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No. 7159.
R. J. RIDDLE
v.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY.

Submitted March 26, 1915. Decided January 11, 1916.

Defendant's rates for the interstate transportation of sand and gravel in carloads from Estill Springs and Henry's Sandcut, Tenn., to various points in Tennessee and Alabama, representing increases since January 1, 1910, found reasonable and complaint dismissed.

Perkins Baxter and O. P. Anderson for complainant.

R. Walton Moore and C. D. Drayton for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the sand and gravel business, with headquarters at Estill Springs, Tenn. By complaint, filed August 2, 1914, he alleges that the rates charged by defendants for the transportation of sand and gravel in carloads from Estill Springs and Henry's Sandcut, Tenn., to Huntsville, Ala., and Chattanooga, Tenn., and to various other points on defendant's line in Tennessee and Alabama, are unreasonable.

Estill Springs is on defendant's main line between Nashville and Chattanooga, 77 miles from Nashville and 74 miles from Chattanooga. Henry's Sandcut is on defendant's Tracy City branch, about 11 miles from its junction with the main line at Cowan, Tenn., 10 miles south of Estill Springs. The Tracy City branch is one of the most difficult to operate of defendant's whole system. The total distances involved range from about 30 miles to about 100 miles. Complainant ships principally to Chattanooga and Huntsville, Ala., and is mainly interested in the rates to those points. Chattanooga is 74 miles from Estill Springs and 75 miles from Henry's Sandcut. Huntsville is 53 miles from Estill Springs and 65 miles from Henry's Sandcut. Traffic between the Tennessee points involved must move a part of the way outside of Tennessee. All rates are stated in cents per ton.

The rates assailed result from the application of a mileage scale effective August 13, 1914, and range from 35 cents to 55 cents for the distances involved. The rates from Estill Springs to Chattanooga and Huntsville are 50 cents; from Henry's Sandcut, 55 cents. Prior

to August 13, 1914, a blanket rate of 40 cents applied generally from and to the main-line points regardless of distance, with an additional 5 cents for branch-line service. This former basis was established at complainant's solicitation at a time when the rates applicable were the mileage rates on brick, and ranged from 70 cents to \$1 for the distances involved.

Defendant contends that brick, sand, and gravel are analogous in that they are low-grade commodities, which because of their comparatively low value and general production throughout the country, do not permit of very long hauls; that the rates on brick were and are normal rates and reasonable for the transportation of sand and gravel; that the present lower scale of rates on sand and gravel was established as a compromise and not because defendant regarded it as reasonable for the service performed; that the blanket rates which complainant seeks to have reestablished were originally published against defendant's best judgment, and in the face of the apprehension that similarly situated points would, in order to enable complainant to extend his market, demand the same adjustment. While this apprehension was realized, the business that complainant estimated he could do under the lower rates granted him never fully materialized. Defendant states further that the sand and gravel involved is not carried in cars that would otherwise move empty, but in cars which might be used to carry coal from the fields located in the general vicinity of the sand pits involved. Numerous rates maintained by various southern roads and rates prescribed by southern state railroad commissions on sand for distances equal to the distances here involved are cited, which are uniformly higher than the rates assailed. The rates cited are said to be standard rates and the lower rates maintained on sand and gravel between certain points to be due to extraordinary conditions peculiar to the traffic affected.

Complainant shows that defendant's rates are higher than the rates applicable between certain other points on various lines. The rest of his evidence consists principally of the history of the rates involved which we have outlined above, and evidence that his shipments have practically ceased since the rates assailed took effect. We have held repeatedly, however, that the reasonableness or unreasonableness of a rate does not depend exclusively upon shippers' ability profitably to market their products under it.

We find that defendant has justified the rates involved as reasonable, and the complaint will be dismissed.

No. 7191.
THOMAS J. SMITH
v.
CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.

Submitted February 26, 1915. Decided January 11, 1916.

Defendants' refrigeration charges on apples from Crozet, Va., to Chicago, Ill., iced initially and not re-iced in transit, not found unreasonable. Complaint dismissed.

J. C. Jeffery and C. A. Butler for complainant.
W. S. Bronson for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a dealer in fruits and vegetables, with his principal place of business at Chicago, Ill. By complaint filed August 19, 1914, he alleges that defendants' refrigeration charges on apples from Crozet, Va., to Chicago, iced initially and not re-iced in transit, are unreasonable. Reparation is asked in the sum of \$1,081.65 on numerous shipments of apples during September and October, 1912 and 1913.

Prior to May 5, 1909, defendant Chesapeake & Ohio Railway's refrigeration charges on apples from Crozet to Chicago were 32 cents per standard barrel and 19 cents per half barrel. Effective May 5, 1909, these charges were reduced to 28 cents per barrel and 15 cents per half barrel. Complainant made a number of shipments from the vicinity of Crozet in 1910, some of which were iced by him, others by the carrier under his directions as to the amount of ice desired. During 1910 this service cost complainant generally from \$10 to \$14 per car. Effective October 9, 1911, defendants established refrigeration charges on apples, cranberries, and pears from specified points on their lines, including Crozet, to Chicago, of 10 cents per 100 pounds "when initially iced and not re-iced in transit, carload minimum 24,000 pounds," and 17 cents per 100 pounds "when initially iced and re-iced in transit as may be necessary, carload minimum 24,000 pounds." The shipping season of apples from Virginia extends through August, September, and October. Ventilator cars generally are employed in the movement, but during the hot part of the season refrigeration is necessary. Initial icing generally suffices to refrigerate shipments from and to the points involved.

Complainant assails both the charge maintained and the basis on which it is published, contending that a refrigeration charge should include no item of cost for the use of special equipment or for the transportation of the ice; that shippers should be permitted to ice the cars; and that if the carrier does the icing the total refrigeration charge should not exceed \$2.50 per ton for the actual amount of ice ordered. The refrigeration charges of a number of other carriers are cited in comparison. Some of the carriers named publish refrigeration charges based on the cost of ice put into the bunkers, but all of the charges cited apply outside of the territory involved, and the necessary similarity of transportation conditions is not shown.

Defendants state that the demand for refrigeration service on apples shipped from points on the line of the Chesapeake & Ohio Railway is almost negligible. During the 1914 shipping season only 3 per cent of the shipments of apples over defendants' lines moved in refrigerator cars. The Chesapeake & Ohio owns no refrigerator car equipment adapted to the transportation of fruits and vegetables, and some years ago contracted with Swift & Company for the use of its cars. The contract accords Swift & Company three-quarters of a cent per mile per car, loaded or empty, and the whole revenue accruing from the refrigeration service. About 70 cars were furnished the Chesapeake & Ohio Railway in 1912. Defendants state that this number of cars would cost about \$100,000, or an annual investment, on a 6 per cent basis, of about \$6,000; and that the cars could be utilized but little except for this apple traffic. They estimate that only 100 shipments would be made annually, which would mean an interest charge of about \$60 per car per trip. The cost of the refrigeration service performed for complainant's shipments during 1910 is placed at \$38.18 per car, less the profit realized from the haul of the ice from Crozet to Chicago. The cost of ice at Crozet is placed at \$4 per ton. The average refrigeration charge on shipments of apples from Crozet to Chicago was \$29.56 during 1912 and \$29.91 during 1913. It is stated that the average cost to Swift & Company of icing the shipments, exclusive of overhead expenses, was \$21.46 during 1912 and \$25.91 during 1913; that Swift & Company's refrigeration transportation operations for the year 1913 resulted in a net loss of 2 per cent and that the contract referred to will not be renewed. Swift & Company are said not to furnish refrigeration service to any carrier on a lower basis than to defendants.

In *Refrigeration Charges on Fruits and Vegetables*, 29 I. C. C., 653, we permitted the discontinuance of the so-called "shippers' icing plan" and the substitution of a flat refrigeration charge of \$40 per car. Under the basis there superseded the charge was \$2.50 per ton for the ice furnished. In *Rates on Fruits and Vegetables*, 24 I. C. C., 37 I. C. C.

164, we permitted proposed increases in refrigeration charges, stated to be used principally for the transportation of peaches and apples from certain stations on the Western Maryland Railway to various destinations, including Chicago. The charges there involved are not readily comparable with the charges now before us for the reason that they were published on a different basis. We observe, however, that the half-tank refrigeration charges in effect before the increases there involved took effect, which were the lowest charges available for any degree of refrigeration, were higher than the average charge on complainant's shipments. The refrigeration charges of the Norfolk & Western from territory contiguous to the Crozet section are identical with the charges assailed, while the charges of the Southern Railway are higher. Since the hearing the Chesapeake & Ohio has filed a tariff, effective September 1, 1915, canceling the charges complained of in this proceeding and establishing instead a charge of \$2.50 per ton for the actual weight of the ice furnished.

We find that the charges assailed are not shown to have been unreasonable, and the complaint will be dismissed.

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No. 7513.
INDUSTRIAL TRAFFIC ASSOCIATION
v.
NEW YORK CENTRAL & HUDSON RIVER RAILROAD
COMPANY ET AL.

Submitted June 16, 1915. Decided January 4, 1916.

Ratings applied by defendants in official classification territory on less-than-carload shipments of dynamos and electric transformers for scrap purposes not shown to be unreasonable or unjustly discriminatory. Complaint dismissed.

R. C. Jones for complainant.

F. D. McKenney, W. C. Carpenter, and R. N. Collyer for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation organized to promote the trade interests of its subscribers, with its office at Philadelphia, Pa. By complaint, filed November 27, 1914, on behalf of certain named members, it attacks as unreasonable and unjustly discriminatory the carload and less-than-carload ratings applied by defendants in official classification territory on shipments of secondhand dynamos and transformers for scrap purposes. The ratings applied are the ratings on dynamos, new or secondhand, boxed or on skids, crated, and on electric transformers: First class, less than carloads; fifth class, carloads. The attack on the carload ratings was abandoned at the hearing.

Only two of complainant's subscribers on whose behalf the complaint was filed appeared at the hearing: The National Machinery & Wrecking Company, a copartnership located at Cleveland, Ohio; and Jos. Rosenthal's Sons, Inc., located at Philadelphia, Pa. These concerns buy old electrical equipment, such as dynamos, transformers, etc., at various points, and ship them to a particular point where they are broken up. The various scrap materials are then separated and sold. When dynamos or transformers are scrapped at the point of origin defendants assess the rates on scrap applicable to the several parts, but when they are shipped intact the rates assailed are applied. Complainant asserts that the value of the old dynamos and transformers shipped intact but for scrap purposes is about one-tenth of

the value of the new machines, and that it is impracticable to scrap these machines at the points of shipment because of the expense of sending the necessary labor to the several points. It often requires the use of special machinery and a person of some experience to dismantle a dynamo or transformer if the utility of the material is to be preserved. Complainant insists that the declaration by the shipper that these dynamos and transformers are shipped for scrap purposes should entitle them to be billed as scrap dynamos or transformers and at a rate no higher than the rate applicable to the highest grade of metal contained in a particular machine.

Complainant's subscribers purchase these machines upon the information relative to their size, make, plate readings, etc., furnished by the party offering them for sale and without inspection. Frequently their condition is not discussed. There is no absolute means of telling from a superficial examination, even by an expert, whether a used dynamo or transformer can be refitted and resold as a second-hand article or whether it is useful only as scrap. Most shippers do not know what the consignee will do with the machines; nor does the consignee know until they are received. All that may be required to render them salable as secondhand machines is washing, painting, polishing, and adjustment of the bearings. Many are repaired and resold at prices from 10 per cent to 25 per cent of their original value, depending on the make and the demand.

We have repeatedly declined to sanction the principle that old and secondhand articles are necessarily entitled to lower ratings than the same articles when new. *Minneapolis Traffic Asso. v. C. & N. W. Ry. Co.*, 23 I. C. C., 432; *Hirsch & Sons Iron & Rail Co. v. W., B. & A. Electric Railroad Co.*, 26 I. C. C., 480. Complainant cites *National Machinery & Wrecking Co. v. P., C., C. & St. L. Ry. Co.*, 11 I. C. C., 581, decided March 23, 1906, in which one issue was whether the rate on dynamos valuable only as junk should be the same as the rate on new dynamos. But we found in that case that the dynamo involved was in fact junk when shipped, saying:

We think that it should be possible to ship as junk a dynamo which has been bought for that purpose and which has actually no other value.

Our subsequent decisions in other cases, however, are controlling.

We find that the ratings assailed are not shown to be unreasonable or unjustly discriminatory.

The complaint will be dismissed.

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No. 7522.

W. E. HEYSER LUMBER COMPANY

v.

KANAWHA & WEST VIRGINIA RAILROAD COMPANY
ET AL.

Submitted September 7, 1915. Decided January 4, 1916.

Demurrage charges collected upon a car of lumber at Detroit, Mich., not found to have been unlawfully assessed. Complaint dismissed.

W. H. Lockwood for complainant.

Arthur Patriarche for Pere Marquette Railroad Company.

G. S. Clark for Kanawha & West Virginia Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale lumber business with headquarters at Cincinnati, Ohio. By complaint, filed November 28, 1914, it alleges that the demurrage charges assessed by defendants upon a car of lumber at Detroit, Mich., were unreasonable. Reparation is asked.

The lumber was shipped by complainant from Quicky, W. Va., on December 10, 1912, consigned to itself at Detroit, and routed specifically "Transit Ry." The shipment arrived in Detroit over the Pere Marquette Railroad on December 28, 1912, with charges to be collected. There is no "Transit Railway" at Detroit, but that name is sometimes applied to a switching line operated by the Michigan Central Railroad, the correct name of which is the Detroit Manufacturers' Railroad. Line-haul carriers to Detroit deliver freight to switching roads only upon payment or guaranty of payment of the line-haul charges, and as complainant was unknown both to the Pere Marquette and to the switching line the Pere Marquette held the car. Complainant's address was ascertained on January 3, 1913, and on the same date postal-card notice of the car's arrival was sent by the Pere Marquette to complainant's Cincinnati office. No disposition instructions were received from complainant, and the Pere Marquette finally ascertained from the Chesapeake & Ohio Railway, an intermediate carrier, that the shipment was intended for the Yeomans-Diver Company at Detroit, Mich. This information was contained in a telegram dated January 18, 1913. The

Yeomans-Diver Company being on the Pere Marquette's credit list, that road, in connection with the Manufacturers' Railroad, effected delivery on January 24, after \$17 demurrage charges had accrued. The last day for which demurrage was assessed was January 24. The record does not show why the car was not delivered immediately after the receipt of the telegram of January 18, instead of on January 24.

Complainant put its correspondence file in evidence, which contains a carbon copy of a letter, dated December 13, 1912, addressed to "Agent, Transit Railway Company, Detroit, Mich.," directing delivery to the Yeomans-Diver Company, and a copy of a letter, dated January 6, 1913, addressed to W. A. Donald, agent, Pere Marquette Railroad Company, Detroit, Mich., acknowledging the receipt of the postal-card notice of January 3, with the statement that the car should be delivered to the Yeomans-Diver Company. The Pere Marquette states that a careful examination of its files and of the files of the Michigan Central and the Manufacturers' Railroad failed to disclose any record of complainant's letter of December 13, addressed to the agent of a nonexistent carrier; also that it is customary for a switching line receiving instructions relative to the delivery of a car to communicate the instructions to all lines that might haul the car in, and that no instructions relative to the car here involved were received from the Manufacturers' Railroad. Receipt of the alleged letter of January 6, addressed to agent Donald, is denied categorically.

No one with personal knowledge of complainant's correspondence relative to the car appeared at the hearing. Complainant's representative expressed his belief that the letters described were placed in the mail, but apparently based his belief entirely upon the presence of the carbon copies described in complainant's file.

The evidence does not establish that the Pere Marquette received complainant's disposition orders. There is not even enough evidence to warrant a presumption that they were received. We find, therefore, that the demurrage charges assailed are not shown to have been unlawful. An order will be entered dismissing the complaint.

37 I. C. C.

No. 7545.
M. H. BEKKEDAL
v.
CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY
COMPANY ET AL.

Submitted June 1, 1915. Decided January 4, 1916.

Rate of 17½ cents per 100 pounds for the movement of lumber in carloads, interstate, from Couderay, Wis., to Boscobel and other points in Wisconsin, found unreasonable. Reasonable rates for the future established and reparation awarded.

A. E. Solie for complainant.

J. B. Sheean, O. W. Dynes, and J. N. Davis for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the production, use, and sale of lumber in the state of Wisconsin, with his principal office at Westby, Wis. By complaint, filed December 7, 1914, he alleges that defendants have refused to establish joint rates on lumber in carloads from Couderay, Wis., to Boscobel, Soldiers Grove, Readstown, La Farge, Gays Mills, Viola, and Richland Center, Wis.; that lumber shipped from Couderay to the points named moves through parts of Minnesota and Iowa; that the through rate applicable, 17½ cents per 100 pounds, is composed of the local rate of the Chicago, St. Paul, Minneapolis & Omaha Railway, hereinafter called the Omaha, from Couderay to Chippewa Falls or Eau Claire, Wis., 6½ cents per 100 pounds, and the local rate of the Chicago, Milwaukee & St. Paul Railway, the only other defendant, hereinafter called the Milwaukee, from the junctions named to destinations, 11 cents; that the 17½-cent through rate is unreasonable and unjustly discriminatory to the extent that it exceeds 12½ cents. Reparation is asked.

Couderay is a local station on a branch of the Omaha Railway about 81 miles north and east of Chippewa Falls. The distance to Eau Claire is 10 miles greater than the distance to Chippewa Falls. Boscobel is 211 miles from Chippewa Falls over the Milwaukee and 197 miles from Eau Claire. The short line from Couderay to Boscobel is by way of Eau Claire, 288 miles. Boscobel is a local station on the Milwaukee's line from Madison, Wis., to McGregor, Iowa. The other points of destination involved are all branch-line points on

the Milwaukee in the general vicinity of Boscobel and are all farther than Boscobel from Couderay. The unweighted average distance to the points named is 315 miles.

Complainant produces lumber and tobacco-box shooks at Couderay; uses tobacco-box shooks for packing tobacco for shipment at Boscobel, where he maintains a retail lumber yard from which he sells mainly to farmers in the surrounding country in competition with other near-by lumber yards located at Blue River, Woodman, Steuben, and Fennimore, Wis. Blue River and Steuben are served by the Milwaukee, Fennimore by the Chicago & North Western Railway, and Woodman by both roads. The competitive points named, except Fennimore, get their supplies from Wisconsin points at intrastate rates, which generally do not exceed 13 cents per 100 pounds. Competitive points on the Milwaukee would pay the same rates on lumber from Couderay as complainant pays. The intrastate rate on the North Western from Couderay to Woodman, about 365 miles, is 13 cents. Rates from Couderay over intrastate lines of defendants via Madison are 19½ cents to Boscobel, 17 cents to Richland Center, and 20 cents and 21 cents to the other points involved. The destination points are in the tobacco-raising district and complainant meets competition in the sale of tobacco-box shooks at such points from points which have lower rates than Couderay. A rate of 12 cents applies from Menominee, Mich., to Boscobel, 277 miles.

Complainant relies principally upon discrimination and prejudice. He fails, however, to establish that he is subjected to discrimination that is unjust or to prejudice or disadvantage that is undue. Both as a lumber dealer and as a consumer of lumber complainant has rates open to him from points in Wisconsin other than Couderay made on the same basis as the rates available to his competitors and not any higher than the rates open to his competitors. As a lumber producer his rates from Couderay to points in Wisconsin other than those named in the complaint are on the group basis adopted in Wisconsin and are no higher than other shippers pay for like service. Complainant is entitled to just and reasonable rates, however, both as a producer of lumber at Couderay and as a consignee of and dealer in his own product at Boscobel and the other points named. Lumber-producing points in Wisconsin, generally, are grouped, and the scale of rates in force on shipments to points within that state are perhaps somewhat lower than the 12½-cent rate which complainant asks. It is unnecessary to detail all of complainant's and defendants' contentions. Many of them are collateral to the real issue presented, which is the reasonableness of the through rates.

None of the points involved, except Boscobel, is on a main line of the defendants, and the transportation involved is over two competitive systems. The Mississippi River must be crossed twice. Most

of the shipments involved moved to Boscobel. To that point the 17½-cent through rate charged yields more than 12.15 mills per ton-mile. On the weighted average distance for all of the shipments involved, 296 miles, the 17½-cent rate earned 11.82 mills per ton-mile; 11.11 mills for the unweighted average distance. The rates from group points in Wisconsin to points of destination in the state over most of the lines serving the territory are voluntary rates and are on a lower basis. The through rates here assailed are clearly unreasonably high. The 12½-cent rate claimed would have earned 8.61 mills per ton-mile on shipments from Couderay to Boscobel and 7.94 mills on shipments moved 315 miles.

In the year 1909 the Railroad Commission of Wisconsin in *Wis. Retail Lbr. Dealers Assn. v. C. & N. W. R. Co., et al.*, 3 W. R. C. R., 471, 589, established a schedule of joint rates on Wisconsin lumber, in carloads, between the Chicago & North Western and Milwaukee. The rates thus established were for 320 and over 300 miles, 10.7 cents per 100 pounds, and for 500 and over 480 miles, 12.5 cents per 100 pounds. The Wisconsin commission compiled joint rates on lumber then in effect between points on the Milwaukee and the Wisconsin Central; similar compilations of joint rates on lumber to which the Chicago & North Western Railway was a party; and also a similar compilation of joint rates on lumber to which the Milwaukee was a party. An abstracted summary of these compilations was set forth at length in the report of the Wisconsin commission and from it the conclusion was drawn that—

The surprisingly large number of joint rates shown in the tabulations is evidence of the voluntary recognition on the part of the respondent companies of the existence of a fairly wide necessity for the establishment of joint rates between points in Wisconsin.

The testimony also showed that the retail lumber dealers had been restricted in the choice of a market for the purchase of their stocks. The level of rates in the schedule which the Wisconsin commission prepared is somewhat higher than the joint rates which the respondent railways themselves voluntarily put into effect.

Among other comparisons of rates on lumber complainant submits an exhibit detailing rates on that commodity from Couderay and Park Falls, Wis., to points in Illinois on the Chicago, Burlington & Quincy Railroad from which it appears that for distances ranging from 397 to 792 miles the rates are from 12 to 18 cents per 100 pounds, yielding per ton-mile revenues of from 6.80 to 5 mills.

The rates from St. Paul and Minneapolis, Minn., and from Duluth, Minn., to Chicago, Ill., are 11 cents per 100 pounds. The rates from these latter points are doubtless influenced by railroad and market competition, but, for example, there is no showing that the rates from Couderay and Park Falls to points in southern Illinois, for

example, Jacksonville, 609 miles, rate $17\frac{1}{2}$ cents per 100 pounds, are borne down by the same influence.

Upon all the facts of record we find that the rates on lumber from Couderay, Wis., to Boscobel, Soldiers Grove, Readstown, La Farge, Gays Mills, Viola, and Richland Center, Wis., have been, are, and for the future will be unreasonable and excessive to the extent that they exceeded and exceed $12\frac{1}{2}$ cents per 100 pounds; that complainant has made shipments since December 18, 1912, in accordance with the foregoing statement of facts, and has paid charges thereon at rates herein found unreasonable; that he has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rates herein found reasonable; and that he is entitled to reparation, with interest. We are unable to determine the amount of reparation due upon the present record. Complainant accordingly should prepare a statement showing as to each shipment on which reparation is claimed the date of movement, point of origin, point of destination, route, weight, car number and initials, rate applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared by complainant and verified by defendants we will consider further issuing an order awarding reparation.

An appropriate order will be entered.

37 I. C. C.

No. 7559.

WALTER A. ZELNICKER SUPPLY COMPANY

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY ET AL.

Submitted June 17, 1915. Decided January 4, 1916.

The movement of 10 carloads of relaying steel rails from Denison, Tex., to Newton, Tex., held intrastate and beyond the jurisdiction of the Commission.

J. D. Fiddler for complainant.

C. S. Burg for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of railway and other supplies, with headquarters at St. Louis, Mo. By complaint, filed December 9, 1914, it alleges that unlawful and unreasonable charges were collected by defendants for the transportation of 10 carloads of relaying steel rails from Denison, Tex., to Newton, Tex., in February and March, 1914. Reparation is asked.

The shipments originated at Parsons, Kans., and were forwarded by the Missouri, Kansas & Texas Railway, hereinafter called defendant, deadhead as company material to Denison, the nearest agency station to Red River, Tex., defendant's junction point with the Missouri, Kansas & Texas Railway of Texas. They were reshipped from Denison or Red River to Newton, where charges were collected on the basis of the through rate from Parsons of \$5.40 per gross ton. Complainant contends that the transportation from Denison to Newton was a separate and distinct intrastate movement and that only the intrastate rate of \$2.70 per gross ton from Denison or Red River to Newton should have been collected.

In January, 1914, defendant sold to Joseph Joseph & Brothers Company some 2,000 tons of relaying rails for delivery f. o. b. any main-line point on defendant's rails. In February and March, 1914, complainant purchased 10 carloads of these rails from Joseph Joseph & Brothers Company on the basis of delivery at a point on defendant's main line. All of the rails were concentrated for inspection at Parsons and the 10 cars in controversy were shipped from Parsons to Denison under bills of lading which showed the Missouri, Kansas & Texas Railway Company as consignor. The shipments were con-

signed to order "Storekeeper, Denison, notify Joseph Joseph & Brothers Company." The bills of lading were duly indorsed by defendant and Joseph Joseph & Brothers Company to complainant; and came into its possession upon payment of the contract price. Complainant meanwhile had sold the rails to one Louis S. Simon of Houston, Tex., who had resold them to the Kirby Lumber Company at Newton. Complainant surrendered the original bills of lading to defendant's representative in St. Louis, and received in exchange therefor five bills of lading on February 20, and five additional bills of lading on March 27. All of the new bills showed Louis S. Simon as consignor and Denison as the point of origin, and the consignee and destination as "order of Louis S. Simon, notify Kirby Lumber Company, Newton, Tex.," with provision for a rate of \$2.70 per gross ton. Defendant's representative at St. Louis in due course instructed the agent at Denison to forward the shipments to Newton. The agent at Denison, however, instead of issuing new waybills for commercial shipments from Denison merely changed the heading of the company waybills from Parsons. The changed billing accompanied the cars to Newton and was relied upon by the delivering carrier as authority for the collection of charges at the through interstate rate.

It is undisputed that at the time the sale to Joseph Joseph & Brothers Company was consummated and the shipments were started on their journey to Denison, complainant was unknown to defendant and that defendant had no knowledge of intended transportation to any other or different destination. It is also undisputed that complainant purchased the rails f. o. b. Denison, and that title to them passed to complainant at Denison; also that the transportation from Denison was separate and distinct from the original transportation to Denison.

Complainant and defendant contend that the movement beyond Denison was wholly intrastate and without our jurisdiction. The connecting carriers, however, refuse to accept this view unless we indorse it.

Upon the facts of record we find that the transportation from Denison to Newton was intrastate; *Gulf, Colorado & Santa Fe Ry. Co. v. Texas*, 204 U. S., 403; *Johnson v. M., St. P. & Ste. M. Ry. Co.*, 22 I. C. C., 255; and that the question of the rate for that service is beyond our jurisdiction. The complaint accordingly will be dismissed.

ST. L. C. C.

No. 7568.
COLORADO TENT & AWNING COMPANY
v.
DENVER & RIO GRANDE RAILROAD COMPANY ET AL.

Submitted August 6, 1915. Decided January 4, 1916.

Rate charged by defendants for the transportation of waterproofed cotton duck, less than carload, packed in bales, not found to be unreasonable or unjustly discriminatory. Complaint dismissed.

R. S. Gutshall for complainant.

E. N. Clark for Denver & Rio Grande Railroad Company.

F. G. Wright for Missouri Pacific Railway Company, Baltimore & Ohio Railroad Company, and Baltimore & Ohio Southwestern Railroad Company.

REPORT OF THE COMMISSION.

By THE COMMISSION :

Complainant is a corporation engaged in the manufacture and sale of tents, awnings, etc., at Denver, Colo. By complaint, filed December 12, 1914, it alleges that a rate of \$2.13½ per 100 pounds charged by defendants for the transportation of two less-than-carload shipments of cotton fabric, in bales, from Akron, Ohio, to Denver, delivered on August 26, 1912, and August 30, 1912, was unlawful, unreasonable, and unjustly discriminatory to the extent that it exceeded \$1.53 per 100 pounds. Reparation is asked. The claim was presented to the Commission informally August 17, 1914.

The shipments consisted of waterproofed cotton duck and were classified by the agent of the delivering carrier as dry goods n. o. s. They were moved by the Baltimore & Ohio Railroad and the Baltimore & Ohio Southwestern Railroad to St. Louis, Mo., and by the Missouri Pacific Railway and the Denver & Rio Grande Railroad beyond. No joint rate was applicable over the route of movement. The rate applicable to and from St. Louis afforded the lowest combination through rate. Class rates from Akron to St. Louis are governed by the official classification and from St. Louis to Denver by the western classification. Dry goods, n. o. i. b. n., less than carloads, are rated first class both in the western and in the official classification. Cotton piece goods, n. o. s., less than carloads, are rated rule 25, which is 15 per cent less than second class in the official

classification and are subject to first-class rating in the western classification. Neither classification contains any specific rating on waterproofed cotton duck. The following class rates were effective Akron to St. Louis: First class, 52½ cents; rule 25, 38 cents per 100 pounds. St. Louis to Denver: First class, \$1.62 per 100 pounds.

A specific commodity rate of \$1.15 per 100 pounds applied from St. Louis to Denver on "cotton piece goods, any quantity, viz. cotton fabrics (made wholly of cotton) in the original piece (but not finished articles ready for immediate use), packed in rolls, covered with burlap, or in boxes or bales." The charges collected were based on a rate of 52½ cents to St. Louis and a rate of \$1.62 beyond. Complainant withdrew its attack upon the rate charged from Akron to St. Louis at the hearing, but insisted that the specific commodity rate of \$1.15 per 100 pounds described should have been applied from St. Louis to Denver.

The articles involved differed materially in appearance, weight, value, and liability to damage from fabrics commercially known as cotton piece goods. The cotton duck foundation of the fabric was saturated and coated with a mixture of oils and gum to render the fabric waterproof. This treatment increased the value of the fabric about 30 per cent and the weight about 35 per cent or 40 per cent. It also rendered the goods more inflammable. Cotton fabrics treated with various mixtures of oils and gums or rubber cement to render them waterproof are used extensively in the manufacture of tarpaulins, covers for wagons and hotbeds, sugar-beet bags, oiled clothing, etc., and uniformly have taken the first-class rating applicable to dry goods, n. o. s., throughout western classification territory.

We find that the commodity rate of \$1.15 per 100 pounds from St. Louis to Denver, which applied only to cotton fabrics made wholly of cotton, was inapplicable to complainant's shipments, and that the first-class rating and rates, applicable to dry goods, n. o. s., were lawfully applicable, and are not shown to have been unreasonable or unjustly discriminatory. The shipments apparently were undercharged 1 cent per 100 pounds.

An order will be entered dismissing the complaint.

87 I. C. C.

No. 7679.
DULUTH LOG COMPANY
v.
**MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY
COMPANY ET AL.**

Submitted September 16, 1915. Decided January 11, 1916.

Complaint alleging that the charges collected for the transportation of a carload of posts from Mile Post 318, near Remer, Minn., to Minnesota Transfer, Minn., destined to Galesburg, Ill., were excessive because based on a weight in excess of the actual weight, dismissed for want of proof.

V. A. Anderson for complainant.

A. H. Lossow for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in the lumber business, with its principal office at Duluth, Minn. By complaint, filed January 18, 1915, it alleges that the charges collected by defendants for the transportation of a carload of posts from Mile Post 318, near Remer, Minn., to Galesburg, Ill., were based on a weight in excess of the actual weight of the shipment. Reparation is asked.

The shipment moved February 11, 1913, via Minnesota Transfer, Minn., and charges to Minnesota Transfer were collected at a rate of 8 cents per 100 pounds, on the basis of 48,500 pounds, net weight. The shipment was handled beyond Minnesota Transfer as Chicago, Burlington & Quincy company material. Complainant contends that the car tendered for loading contained a quantity of cinders weighing about 5,000 pounds, which defendants failed to deduct in computing the weight of complainant's posts. But no definite evidence of the actual weight of the posts is offered and the alleged weight of the cinders in the car admittedly is only an estimate.

We find that the complaint has not been sustained, and an order will be entered accordingly.

No. 7748.
GENERAL EQUIPMENT COMPANY
v.
ATLANTIC COAST LINE RAILROAD COMPANY.

Submitted May 4, 1915. Decided January 4, 1916.

Demurrage charges on three privately owned empty box cars shipped as freight on their own wheels, from Hobson, Ohio, to Alcolu, S. C., found to have been collected without tariff authority. Reparation awarded.

No appearances.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the purchase and sale of railroad cars, with its principal office at New York, N. Y. By complaint filed February 12, 1915, it alleges that demurrage charges in the sum of \$136 assessed by defendant at Alcolu, S. C., during March, 1913, upon three railroad cars, forwarded to Alcolu from Hobson, Ohio, were collected without tariff authority and constituted unreasonable charges. Reparation is asked.

The case was presented without hearing upon agreed facts, the essentials of which are as follows:

The cars were secondhand box cars that had been sold by complainant to the Alcolu Railroad Company. They were transported to Alcolu empty and on their own wheels. Upon their arrival at Alcolu the consignee refused to accept delivery until certain repairs were made, and at complainant's suggestion the cars were placed upon a spur track of defendant, where they remained until complainant had made the repairs demanded. The charges in issue represent demurrage assessed while the cars were held awaiting delivery.

The spur track referred to connected with the private track of the D. W. Alderman & Sons Company's lumber plant and was generally used for receiving and delivering freight to this plant. It is represented by complainant that this last-named company owns the Alcolu Railroad and that the cars could readily have been moved to the private track mentioned, but the complainant gave no order to this effect because it did not consider the cars subject to demurrage and did not anticipate that attempt would be made to assess such charges; also that the repairs consisted chiefly of supplying certain wheels and axles

for the cars; and as these were furnished by the defendant, the defendant was chiefly responsible for the delay.

Defendant's tariffs publishing its demurrage rules provided that cars held for or by consignors or consignees for loading, unloading, forwarding directions, or for any other purpose, are subject to the rules. Certain exceptions, however, were made, among which appear:

(c) Empty private cars stored on carrier's or private tracks, provided such cars have not been placed or tendered for loading on the orders of a shipper.

Complainant's cars clearly fall within this exception and were, therefore, not subject to demurrage. Freight charges were collected for the transportation of these cars based upon specific provisions of southern classification which govern the movement, which classification by another item makes separate provision for "cars of private ownership in transportation service." Defendant's tariffs made no provision for assessment of storage charges on such traffic. Its tariff of freight storage charges did not include empty cars transported as freight nor did it publish "track storage" charges of any character, and there was, therefore, no authority for the assessment of the charges in question, or any portion thereof.

We find that the charges complained of were assessed without tariff authority. We further find that complainant bore these charges, aggregating \$136, and is entitled to reparation in that sum, with interest from September 30, 1914. An order awarding reparation will be entered.

37 I. C. C.

No. 7749.
KEYSTONE WOOD COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted June 11, 1915. Decided January 11, 1916.

Defendants required complainant to install at its own expense inside car door protection for certain shipments of kindling wood in carloads from Houghton, Pa. to points in New York and New Jersey, and assessed freight charges on the gross weight of the shipments, including the weight of the doors installed; *Held*, Not unreasonable or unlawful, and complaint dismissed.

A. Winter for complainant.

F. L. Ballard for Pennsylvania Railroad Company and Long Island Railroad Company.

W. E. Rice for Tionesta Valley Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of kindling wood at Williamsport, Pa. By complaint, filed February 12, 1915, as amended, it alleges that for a number of years it has been required by defendants to furnish at its own expense temporary door protection for its carload shipments of kindling wood and to pay freight charges on the weight of the door at the kindling wood rate. These requirements are alleged to be without tariff authority and to result in the collection of unreasonable and unlawful charges in violation of sections 1 and 6 of the act. Reparation is asked on numerous carload shipments made between October 26, 1908, and March 18, 1915, on the basis of 50 cents for each door installed by complainant plus 50 cents per car for the additional freight charges alleged to have been assessed on the weight of the doors. Only those shipments which were delivered to consignee at destination within two years prior to the time of filing the complaint will be considered, the remainder being barred by the statute of limitations.

Complainant's shipments are made in box cars from its factory at Houghton, Pa., the kindling being tied in bundles about 10 inches in diameter and 2½ inches thick. For a number of years defendants have required complainant to install temporary inside doors to prevent the contents of the cars from shifting and lurching against

the car doors. Charges are assessed on the shipments at a commodity rate on the basis of the gross weight, including the weight of the temporary doors installed. Complainant admits that it is more practicable and convenient for it to install these doors than for defendants to do so, but contends (1) that the kindling wood shipped is bulk freight covered by defendants' tariff provision allowing for the cost of installing the doors; (2) that if it is not bulk freight, defendants' failure to provide for an allowance equal to the cost of the doors is unreasonable and unlawful; (3) that the assessment of freight charges on the weight of the doors at the rate on kindling wood was and is unlawful.

Defendants contend that bulk freight generally is freight that must be shoveled, scooped, or forked in loading, such as grain, coal, or coke; that kindling wood in bundles is not a commodity of this character and that no definition of bulk freight has included articles in bundles or packages. We find that kindling wood in bundles is not included in the category of bulk freight on which defendant Pennsylvania Railroad's tariffs provide an allowance for the cost of installing door protection.

Defendants assert that many kinds of carload freight, whether loaded in bulk or in bundles, packages, barrels, or some other manner, require some form of staying or boarding for door protection to prevent shifting and lurching in transit, and that no allowance is made to shippers furnishing the staying or boarding required, except in a few instances, because it is the duty of the shipper to furnish the protection as part of his duty to load his shipment.

The Pennsylvania Railroad tariffs naming the rates on kindling wood that were in effect when the shipments involved moved were subject to the official classification and to tariffs issued by the Pennsylvania Railroad governing miscellaneous services. The latter tariffs made it the duty of the shipper, except in certain enumerated cases, when loading carload freight required to be staked, blocked, or otherwise secured for safe transportation, to furnish the material and labor necessary. In *New York Shippers' Protective Asso. v. N. Y. C. & H. R. R. Co.*, 30 I. C. C., 437, 441, we said:

Many cases involving the question whether the carrier or the shipper should bear the expense of car fittings have been submitted to us. The summary of our conclusions, given in *Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co.*, 26 I. C. C., 245, 251, was as follows:

"Generally, when it is necessary to secure upon the car freight which the shipper loads, it is the duty of the shipper to provide the necessary material and do the work. This applies to machinery and other articles which must be fastened to the floor of the car or in some other way secured in the car to prevent lurching from side to side. Where special preparation is required to fit the car for the shipment of a particular commodity, the task of special preparation ordinarily devolves upon the shipper, and the reason for this is that the shipper can, as a rule, in case of carload freight

where the loading is done by him and where the car is put into his possession for that purpose, perform this work most economically and to better advantage than the carrier."

See also the so-called *Precooling case*, *A., T. & S. F. Ry. Co. v. United States*, 232 U. S., 199. The record shows that defendants have never made allowances to shippers for the cost of installing such door protection, nor is there any evidence to show that the rates were fixed to include this service. We therefore find that it is not unreasonable or unlawful to require complainant to bear the expense of installing the temporary doors necessary to protect the carriers' equipment from damage.

The official classification expressly provides for the assessment of charges on the gross weight of shipments unless otherwise provided. Prior to April 1, 1915, the official classification provided for an allowance of 500 pounds per car for wooden dunnage, blocking, or bracing material used by shippers in connection with loading car-load freight in box cars. Inside door protection was not included in this provision, and the evidence shows that no allowance was ever made under it for the weight of these doors. The weight of the doors has always been included in the gross weight of complainant's shipments, and we find that this practice was and is not unlawful. An order will be entered dismissing the complaint.

37 I. C. C.

No. 7873.
CHAUTAUQUA REFRIGERATING COMPANY
v.
ERIE RAILROAD COMPANY.

Submitted September 22, 1915. Decided January 11, 1916.

Reparation awarded on account of an unreasonable rate charged for the transportation of 23 carloads of ice from Corry, Pa., to Jamestown, N. Y.

W. F. Endress for complainant.

No appearance for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of artificial ice, with its principal place of business at Jamestown, N. Y. By complaint, filed March 30, 1915, it alleges that the rate charged by defendant for the transportation of 23 carloads of ice shipped from Corry, Pa., to Jamestown, between April 25, 1913, and September 30, 1913, was unreasonable. Reparation is asked.

The shipments aggregated 1,087,400 pounds, or 543.7 tons, and were made at complainant's instance. The local sixth-class rate of 5 cents per 100 pounds, or \$1 per ton, minimum weight 40,000 pounds, was charged. Previously to 1913 ice normally moved from Jamestown, where natural ice is cut, to points in the surrounding country. When complainant's shipments moved to Jamestown there was in effect a rate of 55 cents per ton on ice from Jamestown to Corry. Complainant made contracts for artificial ice to be delivered at Jamestown from Corry on the assumption that the 55-cent rate for the opposite movement would apply, and the error was not detected until some of the shipments involved had moved. The sixth-class rate accordingly was applied pursuant to the official classification. Effective June 20, 1914, defendant established a rate of 60 cents per ton on ice from Corry to Jamestown, and the reparation asked is based on this subsequently established rate.

Jamestown is about 28 miles from Corry and the rate charged earned \$23.64 per car, 84.43 cents per car-mile, 3½ cents per ton-mile, on the average loading of 23.64 tons per car. There apparently is some justification for a lower rate on ice from Jamestown to Corry

than from Corry to Jamestown, since natural ice is cut at Jamestown and distributed in large quantities. But the difference between the rates applicable to and from Jamestown was too great, especially as the haul from Jamestown is mainly up grade, while the haul from Corry to Jamestown is down grade. The present rate from Corry to Jamestown is 63 cents per ton, the 60-cent rate established June 20, 1914, plus 5 per cent.

We find that the rate assailed was unreasonable to the extent that it exceeded the subsequently established rate of 60 cents per ton; that the complainant made the shipments involved as described and paid and bore charges thereon at the rate herein found unreasonable; that it was damaged in the sum of \$217.48; and that it is entitled to reparation in that amount, with interest from June 17, 1914. An order awarding reparation will be entered, but no order for the future.

37 I. C. C.

No. 6194.¹
HOLMES & HALLOWELL COMPANY
v.
GREAT NORTHERN RAILWAY COMPANY ET AL.

Submitted April 8, 1915. Decided December 24, 1915.

1. Rates on grain and other commodities from points in Minnesota and adjacent states to Duluth and other stations at the head of the lakes taking the same rates not shown to be unreasonable or unjustly discriminatory.
2. Class rates upon certain movements between points in Minnesota and points in adjacent states not shown to be unreasonable or unjustly discriminatory.
3. Rates on anthracite and bituminous coal from Duluth and other points at the head of the lakes to points in Minnesota and adjacent states not shown to be unreasonable, but held to be unjustly discriminatory. Complaints dismissed except in so far as they involve rates on anthracite and bituminous coal, which are reserved for further hearing.

Watson & Abernethy, B. G. Dahlberg, S. B. Houck, H. L. Laird, Jeffery & Campbell, W. N. Webb, F. O. Gibbs, D. F. Collins, and J. A. Little for complainants.

¹ The proceeding also embraces complaints in—No. 6352, Magill & Company et al. v. Northern Pacific Railway Company et al.; No. 6357, Imperial Elevator Company v. Great Northern Railway Company; No. 6357 (Sub-No. 1), Crozier-Olds Coal Company v. Great Northern Railway Company et al.; No. 6357 (Sub-No. 2), T. E. Moen v. Great Northern Railway Company; No. 6357 (Sub-No. 3), Fairchild Fuel Company v. Great Northern Railway Company et al.; No. 6357 (Sub-No. 4), J. D. Burkhardt v. Chicago, Milwaukee & St. Paul Railway Company; No. 6357 (Sub-No. 5), W. J. Bailey v. Great Northern Railway Company; No. 6357 (Sub-No. 6), F. C. Alsop & Company v. Northern Pacific Railway Company; No. 6357 (Sub-No. 7), Albert M. Houck v. Chicago, Milwaukee & St. Paul Railway Company et al.; No. 6357 (Sub-No. 8), Magill & Company v. Great Northern Railway Company et al.; No. 6357 (Sub-No. 9), R. E. Jones Company v. Chicago, Milwaukee & St. Paul Railway Company et al.; No. 6357 (Sub-No. 10), Larsen & Anderson v. Great Northern Railway Company et al.; No. 6357 (Sub-No. 11), Clara City Lumber Company v. Great Northern Railway Company; No. 6357 (Sub-No. 12), John R. Jones v. Great Northern Railway Company et al.; No. 6357 (Sub-No. 13), McGregor Brothers & Company v. Chicago, Milwaukee & St. Paul Railway Company; No. 6357 (Sub-No. 14), Chesley Lumber & Coal Company v. Great Northern Railway Company et al.; No. 6357 (Sub-No. 15), Magill & Company v. Same; No. 6357 (Sub-No. 16), Interior Lumber Company v. Same; No. 6357 (Sub-No. 17), Pepper & Diemer v. Great Northern Railway Company; No. 6357 (Sub-No. 18), J. R. Jones v. Minneapolis, St. Paul & Sault Ste. Marie Railway Company et al.; No. 6357 (Sub-No. 19), Lancaster Lumber Company v. Chicago, Milwaukee & St. Paul Railway Company; No. 6357 (Sub-No. 20), Pepper & Diemer v. Minneapolis, St. Paul & Sault Ste. Marie Railway Company; No. 6552, Lampert Lumber Company et al. v. Great Northern Railway Company et al.; No. 6552 (Sub-No. 1), Hoes Brother et al. v. Great Northern Railway Company; No. 6552 (Sub-No. 2), Cargill Elevator Company et al. v. Same; No. 6552 (Sub-No. 3), Liberty Lumber Company v. Same; No. 6552 (Sub-No. 4), Midland Lumber & Coal Company v. Minneapolis, St. Paul & Sault Ste. Marie Railway Company et al.; No. 6552 (Sub-No. 5), Interior Lumber Company v. Chicago, Milwaukee & St. Paul Railway Company et al.; No. 6552 (Sub-No. 6), Skewis Grain Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company; No. 6552 (Sub-No. 7), Lampert Lumber Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company et al.; No. 6552 (Sub-No. 8), Public Service Company of St. Cloud, Minn., v. Great Northern Railway Company et al.; No. 6552 (Sub-No. 9), State Elevator Company v. Great Northern

E. C. Lindley and J. F. Finerty, jr., for Great Northern Railway Company.

Charles Donnelly for Northern Pacific Railway Company.

A. H. Lossow and Kenneth Taylor for Minneapolis, St. Paul & Saulte Ste. Marie Railway Company.

O. W. Dynes and J. N. Davis for Chicago, Milwaukee & St. Paul Railway Company.

W. F. Dickinson for Chicago, Rock Island & Pacific Railway Company.

W. H. Bremner for Minneapolis & St. Louis Railroad Company.

J. B. Shean for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

Railway Company et al.; No. 6552 (Sub-No. 10), C. W. Adams Lumber Company v. Chicago Great Western Railroad Company et al.; No. 6552 (Sub-No. 11), Stearns Lumber Company v. Chicago, Milwaukee & St. Paul Railway Company et al.; No. 6552 (Sub-No. 12), New London Milling Company et al. v. Great Northern Railway Company; No. 6552 (Sub-No. 13), A. C. Ochs Brick & Tile Company et al. v. Chicago, St. Paul, Minneapolis & Omaha Railway Company et al.; No. 6552 (Sub-No. 14), Stenerson Brothers Lumber Company v. Great Northern Railway Company; No. 6715, Interior Lumber Company v. Northern Pacific Railway Company et al.; No. 6715 (Sub-No. 1), F. C. Alsop & Company v. Northern Pacific Railway Company; No. 6715 (Sub-No. 3), T. B. C. Evans v. Same; No. 6715 (Sub-No. 4), Larsen & Anderson v. Great Northern Railway Company et al.; No. 6715 (Sub-No. 5), Midland Lumber & Coal Company v. Chicago, Milwaukee & St. Paul Railway Company; No. 6715 (Sub-No. 6), Lampert Lumber Company v. Great Northern Railway Company et al.; No. 6715 (Sub-No. 7), Fairchild Fuel Company v. Same; No. 6715 (Sub-No. 8), Swain-Farmer Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company et al.; No. 6715 (Sub-No. 9), Central Lumber Company v. Chicago, Milwaukee & St. Paul Railway Company; No. 6715 (Sub-No. 10), Same v. Great Northern Railway Company et al.; No. 6715 (Sub-No. 11), Chasley Lumber & Coal Company v. Great Northern Railway Company et al.; No. 6715 (Sub-No. 12), Eden Valley Lumber Company v. Minneapolis, St. Paul & Saulte Ste. Marie Railway Company; No. 6715 (Sub-No. 13), E. L. Brackett v. Chicago, Milwaukee & St. Paul Railway Company et al.; No. 6715 (Sub-No. 14), Argyle Mercantile Company et al. v. Great Northern Railway Company; No. 6715 (Sub-No. 15), John McCormick v. Chicago, Milwaukee & St. Paul Railway Company et al.; No. 6715 (Sub-No. 16), Cal Sivright v. Chicago, Milwaukee & St. Paul Railway Company et al.; No. 6715 (Sub-No. 17), H. W. Ross Lumber Company v. South Dakota Central Railway Company et al.; No. 6715 (Sub-No. 18), Same v. Great Northern Railway Company et al.; No. 6715 (Sub-No. 19), Same v. Great Northern Railway Company; No. 6715 (Sub-No. 20), Same v. Minneapolis, St. Paul & Saulte Ste. Marie Railway Company; No. 6715 (Sub-No. 21), George A. McCauley v. Great Northern Railway Company et al.; No. 6715 (Sub-No. 22), Same v. Great Northern Railway Company et al.; No. 6715 (Sub-No. 23), H. W. Ross Lumber Company v. Great Northern Railway Company et al.; No. 6788, Superior Manufacturing Company v. Minneapolis, St. Paul & Saulte Ste. Marie Railway Company; No. 6788 (Sub-No. 1), Same v. Northern Pacific Railway Company; No. 6788 (Sub-No. 2), Same v. Great Northern Railway Company; No. 6794, Northwestern Elevator Company et al. v. Same; No. 6794 (Sub-No. 1), Winter-Truesdell-Ames Company v. Same; No. 6794 (Sub-No. 2), Duluth Elevator Company et al. v. Same; No. 6794 (Sub-No. 3), Same v. Northern Pacific Railway Company; No. 6794 (Sub-No. 4), Dower Lumber Company v. Same; No. 6794 (Sub-No. 5), Same v. Great Northern Railway Company; No. 6794 (Sub-No. 6), Wilcox Lumber Company v. Northern Pacific Railway Company; No. 6983, Lampert Lumber Company v. Chicago, Milwaukee & St. Paul Railway Company et al.; No. 6983 (Sub-No. 1), John D. Gruber Company v. Great Northern Railway Company et al.; No. 6983 (Sub-No. 2), Minnesota Stove Company v. Chicago, Milwaukee & St. Paul Railway Company et al.; No. 7004, Marvin Johnson v. Great Northern Railway Company; No. 7281, Crookston Milling Company v. Same; No. 7281 (Sub-No. 1), Red Lake Falls Milling Company v. Great Northern Railway Company et al.; No. 7281 (Sub-No. 2), Nortz Lumber Company v. Great Northern Railway Company et al.; No. 7281 (Sub-No. 3), Same v. Great Northern Railway Company et al.; No. 7281 (Sub-No. 4), Crookston Lumber Company et al. v. Great Northern Railway Company et al.; No. 7281 (Sub-No. 5), Lidgerwood Mill Company et al. v. Minneapolis, St. Paul & Saulte Ste. Marie Railway Company; No. 7281 (Sub-No. 6), Farmers Grain & Milling Company v. Great Northern Railway Company; No. 7281 (Sub-No. 7), Cargill Elevator Company v. Great Northern Railway Company et al.; No. 7281 (Sub-No. 8), Farmers Elevator Company v. Great Northern Railway Company; No. 7498, Christenson Imes Lumber Company v. Northern Pacific Railway Company et al.; No. 7498 (Sub-No. 1), Hawley Roller Mill Company v. Northern Pacific Railway Company; No. 7498 (Sub-No. 2), F. M. McLeod Company v. Same; and No. 7498 (Sub-No. 3), Christenson Imes Lumber Company v. Great Northern Railway Company.

C. C. Wright for Chicago & North Western Railway Company.
A. G. Briggs for Chicago Great Western Railroad Company.

REPORT OF THE COMMISSION.

McCHORD, *Chairman*:

These cases are an outgrowth of rate legislation by the state of Minnesota. They are closely related and will be dealt with in one report. The complainants are corporations, partnerships, or individuals, located at points in Minnesota and adjacent states, and are interested as dealers or consumers in shipments of coal, grain, and other commodities in that territory. They here attack as unreasonable and unjustly discriminatory interstate rates on anthracite and bituminous coal from Duluth, Minn., Superior, Wis., and other points at the head of the lakes taking the same rates to destinations in Minnesota, North Dakota, South Dakota, and Iowa; interstate rates on grain from points in Minnesota, North Dakota, and South Dakota to the head of the lakes; and certain class rates between points in Minnesota and points in adjacent states. Other commodities are also involved, but they do not require separate discussion, for the evidence and argument have been focused upon those mentioned. Our conclusions as to the issues above outlined are controlling as to the matters included in all of these cases.

The state of Minnesota by legislative act (ch. 232, Laws of 1907) prescribed maximum commodity rates for transportation between points in that state. These were based upon, and were somewhat higher than, rates which had been fixed by the Railroad and Warehouse Commission of Minnesota pursuant to a resolution of the state legislature, lower, however, than the rates then in effect. Although enacted to become effective on June 1, 1907, their application, under the restraint of federal injunctions, was deferred until after decrees had been filed in July, 1913, under the mandate of the Supreme Court in the *Minnesota Rate cases*, 230 U. S., 352. In consequence of that decision the carriers published the lower intrastate commodity rates. As a result of competitive conditions certain interstate rates between the head of the lakes and Minnesota points were also readjusted, with substantial reductions, effective August 20, 1913, and other dates.

Pursuant to the resolution referred to, a scale of maximum class rates was prescribed by the Minnesota commission for intrastate transportation, based upon the ratings of the western classification. They were made effective November 15, 1906, and were applied by the carriers to interstate transportation between the head of the lakes and Minnesota points. Although these class rates were in litigation from 1907, their maintenance was not enjoined until 1911, when the

findings of the special master were confirmed by the circuit court in *Shephard v. Northern Pac. Ry. Co.*, 184 Fed., 765. Following this decision the carriers, on July 1, 1911, restored the intrastate and interstate class rates which had been in effect prior to November 15, 1906, and maintained them until July 26, 1913, when the intrastate class rates prescribed by the Minnesota commission were reestablished as a consequence of the decision of the Supreme Court in the *Minnesota Rate cases*, *supra*. The carriers did not again publish the intrastate class scale of rates for interstate transportation between the head of the lakes and Minnesota points but readjusted their interstate rates to meet the competitive conditions which had been thus created.

For convenience the time from June 1, 1907, to the effective dates of the tariffs in or subsequent to July, 1913, will be referred to as the injunction period. Upon wholly intrastate shipments which moved under commodity rates during this period the defendants, other than the Minneapolis & St. Louis Railroad and the Chicago Great Western Railroad, have made or are obligated to make refunds amounting to the difference between the rates actually charged and those prescribed by the state in chapter 232, Laws of 1907. Similarly the same defendants have made or are obligated to make refunds with respect to the class rates for intrastate shipments, in effect from July 1, 1911, to July 26, 1913. By legislative act the carriers have been required to pay such refunds to the person "holding the receipted freight bill" without other proof of damage. Upon interstate shipments no refunds have been paid. The Northern Pacific Railway has two lines from Duluth to points in Minnesota, one of which is wholly intrastate while the other runs through Superior, and is therefore interstate. Refunds have been paid upon shipments which moved by the intrastate line, but not upon those which moved by the interstate line. Between Duluth and points west and south in Minnesota traffic has largely moved over the interstate line because of its more favorable transportation conditions, so that comparatively few refunds have been paid on account of shipments over the intrastate line.

Reparation is now asked upon interstate shipments which moved in this territory under the rates here attacked during the injunction period and subsequent thereto upon the ground that the rates charged were both unreasonable and unjustly discriminatory.

In the earlier of these cases discrimination was the principal basis of the complaints. Reliance was placed by complainants wholly upon a comparison of the rates under attack with the Minnesota intrastate rates. The circumstances and conditions of transportation were alleged to be substantially the same in this general territory whether the movements were interstate or intrastate, and the fact that re-

funds had been paid upon the latter was urged as constituting an unjust discrimination against interstate shippers. The interstate rates were likewise alleged to be unreasonable, but this also was founded upon a comparison with the Minnesota rates. These earlier cases had been submitted upon the records, briefs, and oral argument before the Supreme Court announced its decision in the *Shreveport case, Houston E. & W. Texas Railway v. United States*, 234 U. S., 342. Thereafter the complainants in certain of the cases asked that they be reopened for further testimony. Leave was granted and the cases were reheard.

Upon the rehearing of these earlier cases and upon the hearings of the later cases a series of rate comparisons, drawn from interstate rates applicable to other movements, was offered in evidence for the purpose of showing that the rates here attacked are unreasonable. These comparisons, which relate chiefly to rates on coal, are largely the same in the several cases here involved. They are pressed to our attention upon different theories. It is urged, for example, that they affirmatively show the Minnesota intrastate rates to be reasonable and that these intrastate rates therefore show the interstate rates to be unreasonable. In whatever form the matter is put, it is clear that the fundamental basis of these complaints is the comparison of the interstate rates with those prescribed by the state of Minnesota.

At the outset some general references may properly be made to the readjustments in rates for interstate transportation in the territory here involved which have resulted from the Minnesota rate schedules. The explanation offered by the carriers is this: The Northern Pacific, as to its intrastate line from Duluth, is subject to the state jurisdiction and after the decision of the Supreme Court in the *Minnesota Rate cases, supra*, was compelled to make effective from Duluth the rates prescribed by state authority. As a practical matter, a different basis could not be applied for the movement over its interstate line from Duluth, and therefore the state rates were published for application to this line also. Although the line of the Great Northern Railway is interstate from Duluth to all points in Minnesota, that carrier, under the force of competition, met these Northern Pacific rates at certain points in Minnesota, and the rates thus made were established at certain intermediate points of destination under the requirements of the long-and-short-haul clause of the fourth section. The competitive rates thus made by the Great Northern are the same as the intrastate rates for the Northern Pacific mileage. Superior is intermediate to Duluth on the line of the Great Northern, and to avoid a departure from the fourth section this carrier established these competitive rates from

that point. This compelled the Northern Pacific to establish the state rates from Superior to these competitive points. So also the Northern Pacific was forced to establish the state basis of rates from Superior to noncompetitive points, since these rates were in effect by its interstate line from Duluth, which runs through Superior. Thus it appears that the state basis of class and commodity rates is now applicable via the Northern Pacific from both Duluth and Superior, while the Great Northern has not established these rates from either point since the injunction period except where compelled by competition and the fourth section. Certain readjustments of substantially the same character have been made by other interstate carriers serving the head of the lakes. The Minnesota rate legislation has, therefore, brought about reductions from the head of the lakes to points in Minnesota, both by intrastate and interstate lines, but has also had the effect of making certain inequalities upon these movements which did not formerly exist.

GRAIN.

The grain rates under attack are chiefly those in effect from points in Minnesota to Superior and Duluth, although certain points of origin in the Dakotas are also involved. To sustain the allegations of unreasonableness and unjust discrimination complainants rely upon a comparison of these rates with rates from Minnesota points to Minneapolis prescribed upon a mileage scale by the state of Minnesota. This comparison is set forth as to representative Minnesota stations on the line of the Northern Pacific in the following table. Rates on wheat are taken as illustrative of the grain rates here involved and are stated in cents per 100 pounds for carload shipments:

Rates on wheat from points in Minnesota on the line of the Northern Pacific to Superior and Minneapolis, with distances and earnings per ton-mile.

From	To Superior.				To Minneapolis.			
	Dis- tance.	Rate prior to Aug. 20, 1913.	Present rate.	Ton-mile earnings under present rate.	Dis- tance.	Rate prior to Aug. 20, 1913.	Present Minne- sota rate.	Ton-mile earnings under present rate.
	Miles.	Cents.	Cents.	Mills.	Miles.	Cents.	Cents.	Mills.
Red Lake Falls.....	207	11	10.4	7.7	280	11	10.8	7.1
Le Roy.....	211	11	10.4	7.8	283	11	10.8	7.2
Le Roy.....	211	11	10.4	7.8	283	11	10.8	7.2
Perth.....	251	11	10.8	7.6	323	11	10.6	7.3
Hibbing.....	280	11	10.9	7.5	352	11	10.8	7.2
Hibbing.....	280	11	10.9	7.5	352	11	10.8	7.2
Hibbing.....	280	11	10.9	7.5	352	11	10.8	7.2
South Fork.....	280	11	10.9	7.5	352	11	10.8	7.2

The rates designated as prior to August 20, 1913, were in effect during the injunction period. Inasmuch as the Northern Pacific established the state rates between Minnesota points and Superior, as well as between such points and Duluth, following the dissolution of the injunction, these complaints against that carrier involve only the question of reparation. We are asked to find that the rates charged by the Northern Pacific during the injunction period were unreasonable in so far as they exceeded the rates prescribed for similar distances by the state of Minnesota.

With regard to stations on the line of the Great Northern, the situation is somewhat different. As already stated, this carrier has not established the state rates between Minnesota points and either Duluth or Superior, although at certain points it has met the competition of the Northern Pacific by publishing rates as low as those required by the state for the Northern Pacific mileage. The following table shows comparisons offered by complainants in several of these cases of rates in effect from stations on the line of the Great Northern:

Rates on wheat from points in Minnesota on the line of the Great Northern to Superior and Minneapolis, with distances and earnings per ton-mile.

From—	To Superior				To Minneapolis.			
	Dis- tance	Rate prior to Aug. 20, 1913.	Present rate.	Ton-mile earnings under present rate.	Dis- tance.	Rate prior to Aug. 20, 1913.	Present Minne- sota rate.	Ton-mile earnings under present rate.
	Miles.	Cents	Cents.	Mills.	Miles.	Cents.	Cents.	Mills
Wilmart.....	193	10.5	10.6	.....	92	7.6	7.6	.....
Holland.....	.....	.....	.....	.....	189	10.5	9.4	.....
Dundie.....	247	11.0	10.9	9.8	307	11.0	11.0	7.0
Winkelman.....	.....	.....	.....	.....	233	11.0	10.0	8.4
Red Lake Falls.....	261	11.0	10.9	8.3	319	11.0	10.8	6.8
Farmers.....	.....	.....	.....	.....	251	11.0	10.3	8.2
Farnd.....	281	11.0	11.0	7.8	303	11.0	11.0	7.3
Bernard.....	.....	.....	.....	.....	262	11.0	10.5	8.0
Hutchinson.....	291	11.0	11.4	7.8	349	11.0	11.4	6.5
Stevenson.....	.....	.....	.....	.....	281	11.0	10.8	7.7
Luts.....	302	11.0	11.2	7.4	323	11.0	11.2	6.9
Le.....	.....	.....	.....	.....	293	11.0	10.9	7.4
Rice.....	342	14.0	12.0	7.0	399	14.0	12.0	6.0
Stetter.....	.....	.....	.....	.....	343	11.0	11.4	6.6
St. Vincent.....	358	12.0	11.8	6.6	340	12.0	11.8	6.2
Chapman.....	.....	.....	.....	.....	356	11.5	11.5	6.4

The rates to Superior as above stated are also applicable to Duluth. It appears from the foregoing table that competition with the intra-state rates has resulted in some reductions in the rates under attack. By a comparison with these intrastate rates we are asked to find unreasonable the past and present rates charged by the Great Northern from Minnesota points to the head of the lakes and to award reparation.

Evidence presented in behalf of other complainants may be stated in condensed form as follows: The average haul from 26 stations in 37 I. C. C.

Minnesota on the line of the Northern Pacific to Superior was 228 miles and the average rate on wheat was 10.5 cents. For this distance the rate prescribed by the state of Minnesota is 9.9 cents. Complainants also show that for a similar distance the state of Illinois has fixed a rate of 10.9 cents, and that the rate established by the state of Iowa is 11.6 cents. The average haul to Duluth from stations in Minnesota on the line of the Great Northern was 266 miles and the average rate on wheat was 11.6 cents. For this distance the Minnesota rate is 10.5 cents, the Illinois rate 11.5 cents, the Iowa rate 12.7 cents.

The carriers point to several decisions of the Commission as showing that the rates under attack are reasonable. In *Investigation of Advances in Rates on Grain*, 21 I. C. C., 22, we found that the carriers had justified increased rates from points in South Dakota to Minneapolis. From the rates thus approved comparisons are made in the following table with the rates to Superior, which are here attacked:

To Minneapolis from—	Dis- tance.	Rate on wheat.	To Superior from—	Dis- tance.	Rate on wheat.	Minne- sota rate on wheat
Willow Lake, S. Dak.....	216	13.5	Dodge, Minn.....	217	10.9	10.2
Osceola, S. Dak.....	233	14.5	Red Lake, Wis, Minn.....	231	10.9	12.3
Huron, S. Dak.....	284	14.5	Fitch, Minn.....	281	11.0	12.4
Misson Hill, S. Dak.....	294	14.5	Holt, Minn.....	294	11.4	12.9
Yankton, S. Dak.....	301	14.5	Luna, Minn.....	302	11.2	11.9

In the case above cited, for the purpose of showing the reasonableness of these rates from South Dakota points, the respondents emphasized certain conditions affecting traffic from that territory which result in relatively high operating costs. These conditions, which do not require restatement here, were taken into consideration by the Commission in reaching its conclusion that the rates there in issue had been justified. *Investigation of Advances in Rates on Grain*, *supra*, p. 29. Nor did the Commission consider distance alone in testing the reasonableness of these rates, for the relationship of the grain rates from the various points of origin to the several terminal markets was also an important factor. While these distinctions should be noted, yet the fact that the rates found reasonable by the Commission in that case were substantially higher than the rates here attacked makes this comparison of value in testing the rates now before us.

So, also, the carriers point to certain rates to Superior from Minnesota and South Dakota points which were established as a consequence of our decision in *Commercial Club of Superior, Wis., v. G. N. Ry. Co.*, 24 I. C. C., 96. They are set forth as applicable from Cotton-

wood and other stations named in the same column of the following table and compared with rates here alleged to be unreasonable:

To Superior from—	Distance	Rate on wheat.	To Superior from—	Distance	Rate on wheat.
	Miles.	Cents.		Miles.	Cents.
Cottonwood, Minn.....	243	11.6	Dugdale, Minn.....	247	10.9
Marshall, Minn.....	256	11.8	Red Lake Falls, Minn.....	261	10.9
Ruthron, Minn.....	281	12.3	Euclid, Minn.....	281	11.0
Holland, Minn.....	289	12.4	Holt, Minn.....	291	11.4
Pipestone, Minn.....	298	12.6	Luna, Minn.....	302	11.2
Sioux Falls, S. Dak.....	339	16.0	Roseau, Minn.....	342	12.0
Lennox, S. Dak.....	356	16.5	St. Vincent, Minn.....	358	11.8

For further comparison the carriers refer to *Investigation of Advances in Rates on Grain, supra*, p. 36 *et seq.*, in which reasonable rates on grain from South Dakota points to Omaha, Nebr., were prescribed. Stations with mileages to that point corresponding substantially with those shown in the foregoing table and the rates on wheat are as follows: Sioux Falls, 247 miles, 13.5 cents; Marion Junction, 261 miles, 13.5 cents; Wagner, 268 miles, 16 cents; Stickney, 299 miles, 18 cents; Platte, 305 miles, 18 cents; Kimball, 339 miles, 20 cents; Chamberlain, 359 miles, 22.5 cents.

The foregoing comparisons disclose in summarized form the evidence upon which complainants rely to show that the rates under attack are unreasonable and the evidence which defendants have offered to sustain the reasonableness of these rates. Reduced to its simplest terms, the complainants' case is rested upon a comparison with the grain rates prescribed by the state of Minnesota for equal distances. These rates are substantially lower, it appears, than those considered reasonable by the rate-making authorities of the states of Illinois and Iowa.

This Commission has always given due consideration and weight to state made rates, but under the duty imposed upon it by law the Commission must determine the reasonableness of interstate rates from all of the pertinent facts and can not accept rates prescribed for intrastate transportation as conclusive.

Nor is it true, as seems to be assumed by counsel for some of the complainants, that the Supreme Court in the *Minnesota Rate cases, supra*, held the Minnesota rates to be reasonable. In that case it was merely decided that, except as to one carrier, the entire schedule of intrastate rates had not been proved confiscatory. The inherent reasonableness of particular rates was not in issue. As heretofore pointed out by the Commission, a rate which is merely nonconfiscatory may fall short of being entirely just and reasonable. *Trier v. C., St. P., M. & O. Ry. Co.*, 30 I. C. C., 352, 355. The testimony indicates that the Minnesota rate schedules were not so made as to

fix reasonable rates for the transportation of particular commodities between specified points in the state, but rather to establish such schedules as would in the aggregate yield a proper return upon the property devoted to state traffic. The testimony as to the alleged unjust discrimination in grain rates is exceedingly meager and unsatisfactory, consisting chiefly in a showing of the present relation of the rates themselves. It affords no adequate basis for a finding that unjust discrimination exists.

Upon a consideration of all the evidence of record the Commission is of opinion and finds that the rates on grain here attacked have not been shown to be unreasonable or unjustly discriminatory.

CLASS RATES.

The attack upon interstate class rates in this territory was limited largely to particular movements or to the movements of certain commodities under one or more of the classes. Thus complaint was made of class rates applicable between Minnesota points and Fargo, N. Dak., and of the class D rate under which a mixture of cement, lime, plaster, stucco, and salt moved from Superior to points in Minnesota and North Dakota. The Commission is asked to require the establishment of the Minnesota scale of class rates for application to the interstate transportation here involved and to award reparation.

Fargo and Moorhead, Minn., are separated by the Red River, which forms the boundary line between the states of Minnesota and North Dakota. For many years prior to July, 1913, these points had been accorded the same rates inbound and outbound. As a result of the final readjustment brought about by the application of the Minnesota scale, the rates to and from these points are not now the same. This appears from the following table, in which are shown the present rates for the first five classes from Duluth and St. Paul:

	1	2	3	4	5
Duluth to Moorhead	1.01	1.00	1.00	1.00	1.00
Duluth to Fargo	1.01	1.00	1.00	1.00	1.00
St. Paul to Moorhead	1.01	1.00	1.00	1.00	1.00
St. Paul to Fargo	1.01	1.00	1.00	1.00	1.00

The result of this readjustment has been to increase shipments to and from Moorhead in the case of such commodities as can be drayed across the river. Inadequate warehouse and trackage facilities at Moorhead cause delays, and if the existing relationship is to be continued in the future the development of Moorhead at the expense of Fargo is anticipated. The lower rates to Moorhead prescribed by the state of Minnesota were offered with the statement that they had been found to be "just and reasonable" by the Supreme Court in

the *Minnesota Rate cases, supra*, which statement is an error, as has been pointed out. Upon the mere showing of these intrastate rates, the change in relationship which they have brought about, and what has been summarized with respect to draying freight across the river, complainants place their reliance in seeking an order by this Commission which will require the establishment of the Moorhead rates to and from Fargo. Complainants' witnesses admitted that they do not complain of the interstate rates to and from Fargo considered in and of themselves, but only in so far as they are not now the same as the rates to and from Moorhead. The evidence does not show that Fargo merchants or dealers are in competition with merchants or dealers at Moorhead.

The carriers, furthermore, show that, by reason of the readjustment above referred to, substantial reductions have been made in the rates to Fargo. This appears clearly from the following table:

	1	2	3	4	5
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Duluth to Fargo (251 miles):					
Rates prior to July 26, 1913.....	67	57	44.0	34.0	27.0
Present rates.....	58	49	39.0	30.0	24.0
Minneapolis to Fargo (232 miles):					
Rates prior to July 26, 1913.....	67	57	44.0	34.0	27.0
Present rates.....	57	48	38.5	29.5	23.5

The carriers also contend that their former interstate rates were reasonable and that the Minnesota intrastate schedule is unreasonably low. For proof of this they point to the class rates established by the Commission in several cases. Among these are the rates prescribed for the movements from stations in Iowa to Nebraska destinations in *Iowa State Board of Railroad Commissioners v. A. E. R. R. Co.*, 28 I. C. C., 563. This comparison is as follows:

	1	2	3	4	5
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Minnesota scale for 251 miles.....	56.1	46.7	37.4	28.0	22.1
Iowa-Nebraska scale.....	71.0	60.0	47.0	36.0	28.0
Minnesota scale for 232 miles.....	54.1	45.1	36.1	27.1	21.7
Iowa-Nebraska scale.....	68.0	57.0	45.0	34.0	27.0

Complaint was made of rates on certain commodities to and from Fargo, and the proof as to these was also rested solely upon comparisons with Minnesota intrastate rates. What has been said of the evidence as to unjust discrimination in class rates applies also to the commodity rates in issue.

In one of the cases here considered an attack was directed against the class D rate from Superior to points chiefly in Minnesota. Under this rate the complainant had shipped a mixture of cement, lime, plaster, stucco, and salt. These commodities are classified under class C in the western classification, but all have been carried from the head

of the lakes for some years at class D under exceptions to the classification. The class D rates in effect during the period July 1, 1911, to July 26, 1913, during which higher rates were in effect in consequence of the injunction, are attacked as unreasonable. Since the latter date lower class D rates have been made effective from Superior to many of the Minnesota points here involved. As to the Northern Pacific this has resulted from the publication of the intrastate class rates from Duluth, in obedience to the state authority, and from Superior, for the reasons already outlined. As to the Great Northern the situation is more involved and requires a somewhat extended explanation which, however, will serve to illustrate the complications which have resulted from the influence of the intrastate rates upon those applicable to interstate transportation. The following table, showing changes in the class D rates of the Great Northern from Superior to points in Minnesota, will serve as the basis of this explanation:

	From Duluth and Superior to—			
	Cass Lake.	Brandon.	Wadena.	Crookston.
	Cents.	Cents.	Cents.	Cents.
(1) Minnesota class D rate for 1913.....	10.8	13.0	13.5	14.5
(2) Prior to July 1, 1911.....	10.8	13.0	10.6	14.5
(3) Effective July 1, 1911.....	11.0	13.0	12.0	14.5
(4) Effective Aug. 10, 1913.....	12.0	12.8	12.0	13.0
(5) Effective subsequent to Aug. 20, 1914.....	10.8	12.8	10.5	13.5
(6) Commodity rate for lime, cement, plaster, stone, effective Jan. 26, 1915.....	10.5	12.5	8.2	11.6
Distance via Great Northern from Duluth.....	Miles. 165	Miles. 219	Miles. 239	Miles. 277

The four points above named illustrate four factors which have been operative in determining the present rates to stations on the Great Northern in Minnesota. Cass Lake is not served by the Northern Pacific. Brandon is a noncompetitive point, but is intermediate to Fergus Falls, where the competition of the Northern Pacific is met. Wadena is competitive with the Northern Pacific, which is the short line, 165 miles from Duluth to that point. Crookston is also competitive with the Northern Pacific, and via that carrier the distance is 291 miles from Duluth, making the Great Northern the short line.

The Minnesota class D rate is shown in line (1) for the Great Northern distances stated. It will be observed that the class D rates prior to July 1, 1911, line (2), do not exceed the Minnesota rates, for the state scale of class rates was made effective by the Great Northern from Duluth and Superior following its application to intrastate movements in 1906. Complainants urge this as an admission that the rates thus established were reasonable. The class

rates and passenger fares were in litigation from the granting of the temporary injunction involving commodity rates in 1907, although the carriers were not enjoined as to them until 1911. They can not fairly be regarded, therefore, as having been acquiesced in by the carriers. See *Trier v. C., St. P., M. & O. Ry. Co.*, *supra*.

The class D rates made effective on July 1, 1911, line (3), were those published prior to the order of the Minnesota Railroad and Warehouse Commission in 1906 and which were reestablished as a result of the injunction. They were generally, though not in every instance, higher than the Minnesota rates and are the rates charged for the movement of cement, lime, plaster, stucco, and salt, which are here alleged to be unreasonable. Inasmuch as the class D rates here attacked were increased after January 1, 1910, complainants contend that the burden of proof is upon the carriers to justify these increased rates. The class rates as thus increased were, however, merely restored to their former level in consequence of the decree rendered by the circuit court in *Shephard v. Northern Pac. Ry. Co.*, *supra*. Had these rates not been advanced and then subsequently reduced to the level of January 1, 1910, the burden of showing their unreasonableness would be upon complainants; when a restoration of rates to the level of January 1, 1910, has been made, the burden of proof, while undeniably on the carrier, may be satisfied by less rigorous proof than would otherwise be necessary.

After the intrastate class rates had been restored on July 26, 1913, the Great Northern did not publish the intrastate rates for interstate transportation from the head of the lakes but made reductions, effective August 20, 1913, as shown in line (4), where compelled by Northern Pacific competition. Thus no change was made at Cass Lake, but at Brandon a reduction was made from 13 to 12.8 cents, which is the intrastate rate of the Northern Pacific to Fergus Falls. At that point the Great Northern met this rate and published the same rate to Brandon, an intermediate point, under the requirements of the fourth section. At Wadena no change was made because the short line of the Northern Pacific made an intrastate rate of 12 cents to that point, the same as then in effect via the Great Northern. For the Great Northern distance the intrastate rate would be 13.5 cents, and thus to this point the Great Northern rate is less than the state prescribes for its mileage. At Crookston a reduction was made from 16 to 15 cents, the intrastate rate for the mileage of the Northern Pacific, but this is higher than the rate of 14.5 cents which would result from application of the intrastate rates to the Great Northern mileage. Thus it appears that the Great Northern has made its rates to certain competitive points upon the Northern Pacific mileage whether this results in the same rates or rates lower or higher than the intrastate scale for its own mileage.

The further changes in the class D rate subsequent to August 20, 1913, shown in line (5), were made because the rates effective on that date had placed Duluth jobbers at a disadvantage in their competition with Minneapolis and St. Paul, hereinafter referred to as the twin cities. The all-rail class rates from New York, for example, to Duluth and the twin cities are the same, and the established relation between these points had in the past found recognition in their outbound rates. Under the adjustment of August 20, 1913, the twin cities in many instances had lower rates outbound than Duluth, although the distance from Duluth was less. To correct this situation the twin cities class D rate was made effective from Duluth to points less distant from Duluth than from the twin cities, except at competitive points, where the rate from the twin cities would have reduced the Northern Pacific rate from Duluth. The reason given for this exception is that the Northern Pacific rate, if reduced, would cause other reductions in rates for equal distances on its line under the requirements of the so-called Cashman act (ch. 90, Laws of 1913), which in turn might necessitate further reductions by the Great Northern.

The commodity rates shown in the last line of the foregoing table are also the result of Minnesota rate legislation. Under the authority of the Cashman act the Minnesota commission prescribed rates for the intrastate transportation of cement, lime, plaster, and stucco. These rates became effective via the Northern Pacific from Duluth and were also published by that line from Superior. The Great Northern met this competition by publishing commodity rates as low as those of the Northern Pacific to certain competitive points. These rates of the Great Northern at such points were based upon the mileage of the Northern Pacific, whether this mileage was greater or less than that of the Great Northern. Thus Wadena has been accorded a lower rate than Brandon, although its mileage is greater.

The rates prescribed by the Minnesota commission under the authority of the Cashman act resulted in certain increases in intrastate rates on cement, lime, plaster, and stucco from the head of the lakes to the twin cities. For this movement the carriers in consequence increased their interstate rates, which became *inter alia* the subject of investigation in *Freight Rates from Minnesota Points*, 32 I. C. C., 361. The evidence of the carriers as to these proposed increased rates on cement and related commodities was found to be meager and unsatisfactory. As a result they were held to be not justified. Upon this decision complainants rely as showing that the class D rates in effect July 1, 1911, were unreasonable. In the case cited certain increased class rates were found upon investigation to have been justified. These were rates from the head of the lakes

which the carriers had increased to the level of the Minnesota scale. We made no finding upon the issues there involved from which it may be determined that the class D rates now under attack were unreasonable. Nor may such a conclusion properly be reached by the comparisons which the complainants make with commodity rates for movements in other territories.

As a result of the commodity rates prescribed by the Minnesota commission under the authority of the Cashman act for the movement of cement, plaster, lime, and stucco, complainants located at Superior have secured considerably lower rates to Minnesota points than the class D rates, upon which their shipments moved in the past. The reasonableness of these state rates has not been shown, and their publication from Superior under the competitive conditions described does not form a basis for testing the reasonableness of the class D rates here attacked.

Upon a consideration of all the evidence of record the Commission is of opinion and finds that the class rates here in issue have not been shown to be unreasonable or unjustly discriminatory.

COAL.

In the greater number of these cases interstate rates on anthracite and bituminous coal from the head of the lakes to stations in Minnesota, North Dakota, South Dakota, and Iowa are attacked as unreasonable and unjustly discriminatory. Complainants in some of the cases rely wholly upon a comparison of the rates under attack with the Minnesota intrastate mileage schedules of rates applicable to coal. In other cases additional rate comparisons drawn from movements in various sections of the United States have been made upon the theory that these rates show the Minnesota schedule to be reasonable and therefore a fair standard of comparison.

In July, 1913, following the decision of the Supreme Court in the *Minnesota Rate cases*, *supra*, the Northern Pacific published the state schedules of coal rates from Duluth and Superior to points in Minnesota. The application of these rates from Duluth was required by the state authority, and their publication from Superior followed for reasons heretofore explained. The reductions in rates thus brought about were large. Effective August 20, the Great Northern published a new schedule of interstate rates applicable from the head of the lakes. Many readjustments were made in the rates to Minnesota points and also some changes to points in adjacent states. In making these rates the state basis was not adopted, but at certain competitive points the Great Northern met the Northern Pacific intrastate rates and made other reductions to intermediate points where required by the fourth section. The following table, which has refer-

ence to bituminous coal and embraces competitive points of these carriers, shows in part the effect of the Minnesota schedules upon the interstate rates from the head of the lakes. Rates are stated here and throughout the discussion of coal rates, in dollars and cents per net ton of 2,000 pounds.

Rates on bituminous coal effective prior to and on or after August 20, 1913, published by the Great Northern for application from Superior to points in Minnesota served by the Great Northern and Northern Pacific, together with the Minnesota intrastate rates for Northern Pacific distances.

From Superior to—	Dis- tance.	Prior to Aug. 20, 1913.		Effective on or after Aug. 20, 1913.		Intrastate.	
		Rate.	Ton-mile earnings.	Rate.	Ton-mile earnings.	Rate.	Ton-mile earnings.
	Miles.		Mills.		Mills.		Mills.
Hinckley:							
Great Northern.....	67	\$0.90	13.4	\$0.74	11.0		
Northern Pacific.....	71					\$0.74	10.3
St. Cloud:							
Great Northern.....	135	1.25	9.3	1.05	7.8		
Northern Pacific.....	153					1.05	4.9
Sauk Center:							
Great Northern.....	177	1.35	8.8	1.07	6.0		
Northern Pacific.....	177					1.07	4.9
Wadena:							
Great Northern.....	213	1.60	6.9	.95	4.2		
Northern Pacific.....	157					.95	4.2
Fergus Falls:							
Great Northern.....	247	1.90	7.7	1.19	4.8		
Northern Pacific.....	208					1.19	5.7
Crookston:							
Great Northern.....	267	2.00	7.5	1.54	5.5		
Northern Pacific.....	289					1.54	5.3
Breckenridge:							
Great Northern.....	274	2.00	7.3	1.31	4.8		
Northern Pacific.....	215					1.31	5.4
Glyndon:							
Great Northern.....	265	2.00	6.8	1.34	4.6		
Northern Pacific.....	240					1.34	5.6

Reductions were also made in rates applicable to anthracite coal. To the stations named in the foregoing table these rates of the Great Northern prior to August 20, 1913, effective on or after that date, and the earnings in mills per ton-mile under the latter rate, are as follows: Hinckley, \$1.25, \$0.93, 13.9; St. Cloud, \$1.40, \$1.31, 9.7; Sauk Center, \$1.70, \$1.33, 7.5; Wadena, \$1.75, \$1.75, 7.5; Fergus Falls, \$2., \$1.18, 6; Crookston, \$2.10, \$1.92, 7.2; Breckenridge, \$2.10, \$1.63, 6; Glyndon, \$2.10, \$1.68, 5.7. The reduced rates here stated are those made by the Northern Pacific upon the state basis for the distance from Duluth by that line to the points in question. In general it may be said that the reductions of interstate rates on bituminous coal have been greater than those on anthracite. This has resulted from proportionately larger reductions in the intrastate rates on bituminous coal. Further effects of the Minnesota schedules on interstate rates are disclosed in our discussion of the issue of discrimination here involved.

Destinations served by certain of the defendants which have no rails from the head of the lakes are reached by two-line hauls. The

points of this character here involved are located chiefly south and west of the twin cities. Comparatively few changes have been made in the rates on coal from the head of the lakes to such points since the lower intrastate rates became effective. It is also shown that there is a close relation in the rates from the head of the lakes, from Milwaukee, Wis., and from the northern Illinois district to these points. In the following table are stated rates on bituminous coal from the head of the lakes, Milwaukee, and Peoria, Ill., to points in Minnesota south and west of the twin cities, together with distances and earnings in mills per ton-mile:

To—	From Superior.			From Milwaukee.			From Peoria.		
	Dis- tance.	Rate.	Ton-mile earnings.	Dis- tance.	Rate.	Ton-mile earnings.	Dis- tance.	Rate.	Ton-mile earnings.
	<i>Miles.</i>		<i>Mills.</i>	<i>Miles.</i>		<i>Mills.</i>	<i>Miles.</i>		<i>Mills.</i>
Nerstrand.....	193	\$1.40	7.3	411	\$1.50	3.6	353	\$1.50	4.2
Faribault.....	200	1.40	7.0	353	1.50	4.2	369	1.50	4.1
Essig.....	290	1.80	6.2	446	1.80	4.0	483	1.80	3.7
Madison.....	316	1.95	6.2	575	1.95	3.4	632	1.95	3.1
Org.....	351	2.00	5.7	478	2.10	4.4	522	2.10	4.0
Kinbrae.....	369	2.00	5.4	444	2.00	4.5	584	2.00	3.4

From Chicago to these points the rates on ex lake coal, distances, and earnings in mills per ton-mile are as follows: To Nerstrand, \$1.50, 378 miles, 4 mills; Faribault, \$1.50, 438 miles, 3.4 mills; Essig, \$2, 464 miles, 4.3 mills; Madison, \$2.10, 622 miles, 3.4 mills; Org, \$2.35, 533 miles, 4.4 mills; Kinbrae, \$2.25, 527 miles, 4.3 mills.

Of the points named in the foregoing table Nerstrand is served by the Chicago Great Western, Faribault by the Chicago, Rock Island & Pacific Railway and the Chicago, Milwaukee & St. Paul, and Madison by the Minneapolis & St. Louis. These stations are therefore served from the head of the lakes by two-line hauls. The Chicago & North Western serves Essig and has access to the head of the lakes in connection with the Chicago, St. Paul, Minneapolis & Omaha. The latter carrier reaches Org over its own line. Kinbrae is served by the Chicago, Milwaukee & St. Paul, the latter's traffic to the head of the lakes being hauled by the Northern Pacific under a traffic contract.

The complainants point to ton-mile earnings under rates on coal for movements in other sections of the United States which are as low as those derived from the rates in effect from Chicago, Milwaukee, and Peoria to Minnesota points. These comparisons are offered to show that the rates from the last-named points are reasonable and by a further comparison that the rates from the head of the lakes are unreasonable. On the other hand, defendants find in the same comparisons a justification of the rates to the southern Minnesota points here attacked. They assert that the rates on ex lake coal from Chicago and Milwaukee and on coal mined in Illinois to these

points are made on a low basis for longer distances to meet the competition of coal from the head of the lakes. In support of the positions thus taken the parties have relied largely upon statements made in their briefs and, although the evidence shows a competitive adjustment of rates, it is wholly insufficient to afford a clear understanding of the circumstances which are controlling in the relationship thus disclosed.

The complaint in one of the cases here involved embraces an attack upon the coal rates from the head of the lakes to 11 points in North Dakota—Easby, Hannah, Langdon, Wales, Antler, Calvin, Clyde, Maxbass, Upham, Hansboro, Rock Lake; to 4 points in South Dakota—Lily, Ortle, Summit, Waubay; and to 4 points in Iowa—Kanawha, Le Mars, Merrill, and Sibley. A summarized statement offered by complainant in exhibit form which shows the average ton-mile earnings under the rates to these points grouped by states is as follows:

To points in—	Average distance.	Average rate on an- thracite coal.	Average ton-mile earnings.	Average rate on bi- tuminous coal.	Average ton-mile earnings.
	Miles.		Miles.		MIL.
North Dakota.....	414	\$2.894	6.5	\$2.79	6.3
South Dakota.....	350	2.50	6.6	2.35	6.3
Iowa.....	385	2.35	6.1	2.25	5.9

Comparisons of the rates under attack in certain of these cases have been made with rates applicable to movements in other sections of the United States. Such comparisons show many instances of ton-mile earnings lower than those accruing from the rates under attack. On the other hand, the carriers have presented comparisons found in rates which yield ton-mile earnings equal to or greater than those derived from the rates which they here defend. In general, the circumstances surrounding these various movements are not fully disclosed, and in many instances the rates used for purposes of comparison are explained by conditions which are obviously unlike those in the territory here involved. Such comparisons therefore do not afford sufficient reason for condemning or justifying the rates against which complaint is made.

The basic comparison offered by complainants is the schedule of coal rates established by the state of Minnesota. This may be said without qualification as to the complaints in behalf of which no other comparisons are offered. It is also true of those cases presenting further comparisons, as is shown by the following statement taken from one of the briefs:

So summarizing the part that the Minnesota distance tariff plays in this case, it may be said that it is used as a convenient and reasonable "yardstick" for the reason that

it prevails in the state of Minnesota, and a more logical method in making rates to the neighboring states west and southwest can not be found than by the extension of this general scheme.

We are asked to reduce the interstate coal rates in this territory to the general level of the rates prescribed by the state of Minnesota. What has been said in our discussion of the grain rates as to the Minnesota schedules and the decision of the Supreme Court in the *Minnesota Rate cases, supra*, is equally applicable to the coal rates here considered. The evidence of record is insufficient to show that the coal rates under attack are unreasonable *per se*, and no such showing has been made as to require a reduction of these rates to the basis adopted by the state.

The claim of unjust discrimination is made both as to the interstate rates as they existed during the injunction period and as they now exist under modifications brought about by competition with the Minnesota intrastate rates. It is alleged that the transportation conditions upon the movements between points wholly within the state of Minnesota and between points in that state and points at the head of the lakes are substantially the same, making necessary the same basis of rates for interstate and intrastate movements. For this reason complainants urge that the payment of refunds upon intrastate shipments which moved during the injunction period while refusing to pay similar refunds upon interstate shipments, and the present maintenance of a higher basis of interstate rates than is concurrently applied upon intrastate movements, constitute unjust discrimination against interstate commerce, for which complainants should receive reparation upon past shipments as well as an order requiring such discrimination to be removed for the future. It appears that the complainants have received refunds on such of their shipments as were wholly intrastate during the injunction period. At the time the business transactions were conducted which resulted in shipments during that period there was no substantial inequality between the rates in effect on interstate transportation and those applicable to movements for relatively equal distances wholly within the state of Minnesota. An examination of complainants' evidence does not convince us that they have been unduly prejudiced by the fact that refunds have been paid upon such shipments as were intrastate during the injunction period. Furthermore, it is apparent that to require reparation in the amount of these refunds to be paid upon interstate movements would be equivalent to making the Minnesota basis of rates applicable to past interstate shipments. There is obviously no greater reason for so doing in the case of shipments in the past than for prescribing these intrastate rates for application to interstate transportation in the future. The evidence of record does not warrant such an order.

Complainants' allegations that the rates now in effect on coal from the head of the lakes to the points here involved are unjustly discriminatory find abundant support in the evidence of record and admissions of the carriers. The effect of the Minnesota intrastate rates upon the rates for interstate movements from the head of the lakes is not fully disclosed in the foregoing tables. The state schedules, as have been shown, determine the rates to many competitive points. The result is that points unaffected by competition bear higher rates than equally distant competitive points. The rates made by competition have in turn determined the rates to intermediate points as required by the fourth section, but in many instances these rates are not graded as formerly. In order to minimize the reductions the present rates in certain instances have been blanketed for long distances. When released from the Minnesota authority at the boundary lines of that state the carriers have maintained their interstate rates upon substantially their former basis. As a result the rates to points in Minnesota are upon a substantially lower mileage basis than to points in adjacent states. In the following table the readjustments which have followed the establishment of the Minnesota intrastate schedules are shown with respect to rates on bituminous coal from Duluth to stations on the line of the Great Northern in Minnesota and North Dakota. The distances are those from Duluth via the Great Northern to the destinations named:

From Duluth to -	Miles.	Rate prior to Aug. 20, 1913.	Present rate.	Ton-mile earnings under present rate.	Minnesota schedule of rates on bituminous coal.	
					Miles.	Rate.
				<i>Miles.</i>		
Warbo, Minn.....	97	\$0.75	\$0.77	7.7	100	\$0.80
La Prairie, Minn....	109	.75	.75	6.9	110	.80
Wellers Spur, Minn. .	121	1.00	1.00	8.3	120	.80
Dumas, Minn.....	130	1.10	1.10	8.5	130	.80
Nushka, Minn.....	139	1.20	1.20	9.4	140	.80
Bena, Minn.....	146	1.40	1.40	9.6	150	.80
Cuba, Minn.....	160	1.60	1.49	9.3	160	.80
Farris, Minn.....	169	1.60	1.54	9.1	170	.80
Bemidji, Minn.....	170	1.70	1.54	8.6	170	.80
Wilton, Minn.....	175	1.70	1.54	8.3	170	.80
Shovlin, Minn.....	175	1.74	1.54	7.9	200	.80
Bagley, Minn.....	205	1.87	1.54	7.5	210	.80
Lengby, Minn.....	219	1.93	1.54	7.0	220	.80
Fosston, Minn.....	227	1.96	1.54	6.8	230	.80
Erskine, Minn.....	230	2.00	1.54	6.4	230	.80
Mentor, Minn.....	240	2.00	1.54	6.3	230	.80
Bemelt, Minn.....	247	2.00	1.54	6.0	240	.80
Burwell, Minn.....	254	2.00	1.54	5.6	240	.80
Hixon, Minn.....	261	2.00	1.57	5.7	250	.80
Fisher, Minn.....	273	2.00	1.57	5.6	250	.80
East Grand Forks, Minn.	275	2.00	1.57	5.3	250	.80
Grand Forks, N. Dak.	275	2.00	1.67	5.6	300	.80
Ogata, N. Dak.....	275	2.11	2.10	6.8	310	.80
Peterburg, N. Dak.	275	2.40	2.40	7.0	330	.80
Lenn, N. Dak.....	275	2.75	2.75	6.7	330	.80
Tenbridge, N. Dak.	445	2.95	2.95	6.6		
Surrey, N. Dak.....	445	3.15	3.15	6.4		

Rates to stations which are named in the foregoing tables and which are substantially equidistant from Superior by the line of the Great Northern show large inequalities. Thus the rate on bituminous coal to Sauk Center, 177 miles, is \$1.07, and to Bemidji, 175 miles, \$1.54; to Wadena, 233 miles, \$0.98, and to Erskine, 234 miles, \$1.54; to Fergus Falls, 247 miles, \$1.19, and to Benoit, 253 miles, \$1.54.

The rate to East Grand Forks, Minn., \$1.57, is the intrastate rate for the Northern Pacific distance, 317 miles, from Duluth to that point. To Grand Forks, N. Dak., situated on the opposite bank of the Red River, a rate 10 cents higher has been made. In behalf of the Great Northern it was stated that the rate to Grand Forks would have been retained on its former basis, \$2, but for the fact that this would have resulted in shipments to East Grand Forks and the draying of the coal across the river. At Ojata, N. Dak., the rate remains at \$2.10, 43 cents higher than to Grand Forks for an additional haul of 11 miles. To more distant points in North Dakota certain increases have been made.

No justification has been or can be made for the large differences in coal rates for substantially similar distances in this territory or for the abrupt and large difference in the rates to North Dakota points as compared with rates to points in Minnesota. The conclusion is irresistible that unjust discrimination has been shown in the coal rates under attack. As to this the carriers say in their brief:

Discrimination, *as between localities*, by the maintenance of a different basis of rates on state than on the interstate traffic involved, stands admitted of record by all parties. If the Commission finds such discrimination to exist, the carriers will expect to remove such discrimination by increasing the state rate to equality with such interstate rates as this Commission shall find reasonable, whether such rates be those charged by the carriers on the shipments in question or the carriers' present interstate rates or some basis which this Commission may independently determine to be reasonable.

The removal of the discrimination thus conceded in the manner suggested by defendants should not be required without a finding as to what would be just and reasonable rates for the interstate transportation of anthracite and bituminous coal from the head of the lakes to the territory here involved. For such a finding this record affords no adequate basis. Complainants have attacked rates to particular destinations, but any order prescribing rates to these points would inevitably cause wide readjustments of other rates as to which evidence has not been offered. Proof of the coal rate schedules prescribed by the state of Minnesota is insufficient to warrant the adoption of those schedules as just and reasonable for the interstate transportation here involved. Nor would it be proper upon the evidence offered by the defendants to sanction as just and

reasonable their former interstate rates, which are considerably higher than those permitted by the Minnesota tariff.

Comparatively little testimony was introduced into the record on the part of the defendants, although by stipulation rate comparisons and statements of fact were made in their briefs, an unsatisfactory departure from the usual practice. Except in *Manahan v. N. P. Ry. Co.*, 17 I. C. C., 95, which involved the interstate rates on anthracite and bituminous coal from Duluth and Superior to St. Paul and Minneapolis, this Commission has never considered any of the rates on coal from the head of the lakes to the territory here involved. The conditions affecting the rates here in issue are not similar to those upon other movements with which they have been compared. Coal reshipped from the head of the lakes originates in eastern fields, and prior to such reshipment has borne charges for rail-and-lake transportation which are not here disclosed. Many other facts bearing upon the issues now before us have not been shown with respect to all of the defendants, such as the history of the interstate rate structures, volume of movement via each line, car loading and value, use of equipment, revenue, competitive and transportation conditions, relation of rates from various points of origin, terminal expenses, loss and damage, and other facts pertinent to an inquiry involving the reasonableness of rates. In consequence no order should be made at this time requiring the removal of the unjust discrimination here found to exist with respect to the rates on coal. These cases will, therefore, be set for further hearing, when opportunity will be afforded all of the parties for developing all of the necessary facts upon which reasonable and nondiscriminatory rates may be prescribed.

Complainants in several of these cases seek to recover reparation upon the ground that shipments from Duluth over the line of the Northern Pacific to Minnesota points were misrouted. Allegations of misrouting are made, however, in but few of the complaints in which the Northern Pacific is a party defendant. The intrastate and interstate lines of that carrier come together at Carlton, Minn., 27 miles from Duluth via the intrastate line and a few miles more distant via the interstate line. Owing to the less favorable transportation conditions caused by grades on the intrastate line, shipments of coal and other commodities southbound and westbound have been routed by the Northern Pacific with few exceptions over its interstate line. No routing instructions to the contrary having been given by shippers, the same practice was followed during the injunction period. After the reestablishment of the lower intrastate rates the Northern Pacific was compelled to make refunds in the case of a few shipments which had moved wholly intrastate. Complainants in some of these

cases now contend that this defendant should have routed all shipments during the injunction period via its intrastate line, upon the theory that the lower intrastate rates, although enjoined, were at all times the lawful rates, and that had the shipments been so routed these complainants would have received refunds. This contention is not well founded. In routing the shipments here involved over its interstate line the Northern Pacific followed its usual course and charged its lawfully published rates, which were at all times the same over both routes. Inasmuch as the shippers gave no routing instructions and there was no difference in the charges which might lawfully be collected for transportation over either route at the time the shipments moved, the carrier was not required by law to change its methods of operation and abandon the use of its more favorable interstate line or take the risk of refunding part of the charges if subsequently compelled to make effective lower intrastate rates. The correctness of this conclusion becomes apparent when it is considered that the complainants have not shown that the interstate rates were unreasonable or that they have been unduly prejudiced by refunds made in the case of the few shipments which moved via the intrastate line.

Upon all the facts of record we find that the rates here involved other than those on anthracite and bituminous coal have not been shown to be unreasonable or unjustly discriminatory. We further find that the rates on anthracite and bituminous coal here attacked have not been shown to be unreasonable, but it is found that unjust discrimination is caused by the relation of the coal rates in this territory. For the reasons stated, all of these complaints which do not involve anthracite and bituminous coal will be dismissed. The complaints which do involve rates on coal will be held for further hearing, but only as to rates on coal. In so far as such complaints involve rates on commodities other than coal, they are governed by the conclusions announced in this report. An order will be entered accordingly.

INVESTIGATION AND SUSPENSION DOCKET No. 643.
COAL TO RHODE ISLAND POINTS.

Submitted November 26, 1915. Decided January 20, 1916.

Proposed increased all-rail rate on bituminous coal in carloads from the Clearfield district in Pennsylvania to Providence, Auburn, and Olneyville. R. I. found justified.

H. J. Hart for New York, New Haven & Hartford Railroad Company.

L. F. Leighton for Carbon Coal & Coke Company, protestant.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

In the tariffs suspended in this proceeding the respondents propose to increase the all-rail rate on bituminous coal in carloads from the Clearfield district in the state of Pennsylvania to Providence, Auburn, and Olneyville, R. I. The present rate is \$2.45 and the proposed rate \$2.70 per gross ton. Although the suspended tariffs were issued by the Pennsylvania Railroad Company the increase in the rate was made at the instance of the New York, New Haven & Hartford Railroad, the delivering carrier, which alone has attempted to establish the reasonableness of the rate proposed. The protestants are the Carbon Coal & Coke Company and the Skeelee Coal Company, of Boston, Mass. The tariffs naming the proposed increased rate, filed to become effective May 24, 1915, have been suspended until March 21, 1916. Rates are stated herein in dollars and cents per gross ton.

A large quantity of coal is shipped to New England by rail-and-water routes, and the all-rail rates are said to be determined to some extent by the rail-and-water rates. Bituminous coal from the Clearfield district may be shipped by rail to Philadelphia, Pa., or South Amboy, N. J., thence by water to New England ports. Large quantities of West Virginia coal are also shipped to New England by rail and water via Norfolk, Va. From the New England ports the coal received by water is distributed by rail or truck to interior points not located too far from the water. Towns located more than 40 miles inland commonly receive their coal all rail. Olneyville and Auburn are less than 5 miles from Providence, which is located on Narragansett Bay. The distance from Clearfield to Providence is 536 miles. The amount of coal moved into these points all rail, even at the rate of \$2.45, is small. Coal is frequently carried by truck from Providence to Auburn and Olneyville.

The present rate of \$2.45 on bituminous coal from the Clearfield district to Providence, Auburn, and Olneyville is lower than the rates to intermediate points, the rate to many other points east of New London, Conn., being \$2.85 per ton. In the suspended supplements the rate of \$2.85 is in many instances reduced to \$2.70 and the rate of \$2.45 is raised to \$2.70, the object being to make rates more nearly uniform. The rate of \$2.45 is said to have been established a number of years ago to meet rail-and-water competition.

While most of the coal consumed at or near the New England ports is received by boat, there are certain advantages in shipping coal all rail. One disadvantage of using the rail-and-water routes is that the barge rates are available only to shippers who contract for large quantities of coal, while a single carload can be shipped by rail at the same rate per ton as is charged for the transportation of larger quantities. It is said that coal shipped by rail usually arrives in somewhat better condition than that shipped rail and water.

The evidence shows that coal is moving all rail in large quantities to points in New England at rates as high as the rate proposed in this proceeding. Approximately 450,000 tons of coal are shipped annually to Worcester, Mass., all rail, at a rate of \$2.70. The distance from Clearfield to Worcester is approximately the same as that to the three points involved in this proceeding. The rate to Pawtucket, R. I., only 5 miles from Providence, is \$2.70. A large quantity of coal moves to Brockton, Mass., at a rate of \$3. The rate from Clearfield to points on the Pascoag branch of the New York, New Haven & Hartford Railroad, extending northwest from Providence, is \$2.95, which is the rate also in effect to stations South Windham, Conn., to Quidnick, R. I., west of Providence.

The only protestant represented at the hearing expressly disclaimed any intention of questioning the reasonableness *per se* of the \$2.70 rate, but took the position that the respondents should not be permitted to abandon their policy of meeting the rail-and-water competition. In answer to this contention it is only necessary to quote the following statement from our decision in *Rates on Scrap Iron from Gulf Ports*, 33 I. C. C., 668:

It is further urged that water competition still exists and for that reason the rail rates should not be increased. We have uniformly held that it is for the carrier to determine whether or not it will meet such competition. If it elects to discontinue this practice at any point and increase its rates, we are concerned only in the question of whether or not the increased rates are just, reasonable, and proper.

We are of opinion and find that the respondents have established the reasonableness of the proposed increased rate. An order will be entered vacating the orders of suspension.

BITUMINOUS COAL RATES TO THE SOUTHEAST.¹

Submitted November 12, 1914. Decided December 31, 1915.

1. Upon the facts adduced of record rates on bituminous coal from the Tennessee, Virginia, and West Virginia coal fields to southeastern destinations found to be unduly discriminatory and unreasonable in the particulars pointed out in the report, and a basis for reasonable and nondiscriminatory rates in the future suggested.
2. The present rates on bituminous coal from the Appalachia and Dante districts, in Virginia, to Spartanburg, S. C., and from the Pocahontas and New River districts, in West Virginia, to Lynchburg, Va., found unreasonable and reasonable rates prescribed for the future.
3. Joint rates and through routes prescribed on coal from the Pocahontas district to Spartanburg and other points on the Carolina, Clinchfield & Ohio Railway, via St. Paul, Va.

W. L. Bronson for Chesapeake & Ohio Railway Company.

C. B. Northrop and *A. M. Bull* for Southern Railway Company; Virginia & Southwestern Railway Company; Cincinnati, New Orleans & Texas Pacific Railway Company; and other carriers.

J. I. Doran, T. W. Reath, L. H. Cocke, and C. D. Drayton for Norfolk & Western Railway Company.

E. W. Knight, W. S. Saunders, and G. A. Wingfield for Virginian Railway Company.

C. M. Owen and *E. C. Bailey* for Carolina, Clinchfield & Ohio Railway Company.

N. W. Proctor for Louisville & Nashville Railroad Company and Nashville, Chattanooga & St. Louis Railway.

J. F. Bullitt and *W. A. Glasgow, jr.*, for Interstate Railroad Company and Stonega Coal & Coke Company.

E. L. Travis, W. E. Daniel, J. G. Manning, and G. P. Pell for North Carolina Corporation Commission.

W. S. Creighton, Frank Lyon, Paul Dulaney, C. A. Douglas, J. C. Forester, F. C. Wright, H. A. Nix, Blanton Fortson, H. E. Hanes.

¹The proceeding embraces complaints in No. 6324, in the matter of rates on bituminous coal from points in Virginia, West Virginia, Kentucky, and Tennessee to points in Virginia, North Carolina, South Carolina, Georgia, and Florida; No. 5504, Cotton Manufacturers' Association of South Carolina v. Carolina, Clinchfield & Ohio Railway of South Carolina et al.; No. 5505, Bolton Mills et al. v. Norfolk & Western Railway Company et al.; No. 5583, Columbia Laundry Company et al. v. Southern Railway Company et al.; No. 5587, Columbia Laundry Company et al. v. Carolina, Clinchfield & Ohio Railway et al.; No. 5667, Tomlinson Chair Company et al. v. Virginia & Southwestern Railway Company et al.; No. 5836, City of Spartanburg S. C. v. Carolina, Clinchfield & Ohio Railway et al.; and No. 5843, Lynchburg Cotton Mill Company v. Norfolk & Western Railway Company et al.

R. T. Irvine, F. B. James, E. E. Williamson, I. A. Phifer, W. S. Watts, W. A. Wimbish, M. M. Caskie, J. L. Ludlow, J. L. Graham, R. A. Chadwick, and J. L. Davidson for various parties in interest.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The rates charged for the transportation of bituminous coal from mines in the states of Virginia, West Virginia, Kentucky, and Tennessee to destinations in the southeast, and the rate relationship of the several producing fields, having been the subject of formal and informal complaints, this proceeding of inquiry and investigation was instituted in order that the entire situation might be brought before us for review. Many commercial organizations and associations of manufacturers and coal operators intervened and participated in the hearings. The formal complaints were also merged with the general inquiry. The result is a comprehensive record that gives us a broad view of a somewhat complicated rate problem.

The coal-producing region in which we are here interested extends in a northeasterly direction from the Coal Creek district of Tennessee along the Virginia-Kentucky state line to the Pocahontas and New River districts of West Virginia, an air-line distance of 200 miles or more. Coal moving into southeastern territory from Tennessee is produced principally at Coal Creek and Wind Rock, approximately 30 miles northwest of Knoxville, and at Jellico, 34 miles farther north. These mines are served by the Louisville & Nashville and Southern railway companies. The Virginia coal fields are situated in the southwestern part of the state and comprise the Black Mountain, Appalachia, Toms Creek, and Dante, or Clinchfield, districts, the Black Mountain mines being at the extreme west and the Dante mines at the extreme east. This section of the state is served by the Carolina, Clinchfield & Ohio, the Norfolk & Western, the Interstate, the Louisville & Nashville, and the Virginia & Southwestern railroads, and by means of trackage and joint rate agreements the entire coal-producing territory is treated as a unit in so far as rates to the southeast are concerned. The Carolina, Clinchfield & Ohio publishes rates to the south from mines on its rails, from mines on the Norfolk & Western between St. Paul and Norton, and from Dorchester Junction, a point on the Interstate Railroad. The Virginia & Southwestern publishes rates from the mines in its section of the coal field, including the Black Mountain district, from mines on the Interstate Railroad, and from mines on the Norfolk & Western.

The coal mines of Kentucky are principally dependent upon the Louisville & Nashville for reaching the markets. That carrier operates a line, known as the Cumberland Valley division, from Corbin, in the state of Kentucky, through Middlesboro to its terminus at Norton, in

the state of Virginia. From Corbin to Middlesboro the road passes through an important coal-mining region, and an equally important coal section is served by the branch line extending northeastwardly from Orby to Ages and Benham. The coal produced along the line of the Louisville & Nashville reaches the south principally through Corbin and thence over the main line extending through Knoxville to Atlanta.

The most easterly fields involved in this proceeding are the Pocahontas and New River districts of West Virginia, and the principal carriers serving those mines are the Norfolk & Western, the Virginian, and the Chesapeake & Ohio. No particular description of those districts is deemed necessary in this report.

The following statement shows the total tonnage of commercial coal shipped to points in North Carolina and South Carolina during the two years ended June 30, 1913, and its distribution as between the districts mentioned:

From—	Total	Per cent
Eastern Tennessee and Kentucky.....	511,991	9.99
Southwestern Virginia.....	2,333,271	45.88
West Virginia.....	2,330,291	45.88
Total	5,175,553	100.00

We shall first consider the existing rate relationship as between the Tennessee and Virginia coal fields. When referring to the rates from the Tennessee mines we shall use the Coal Creek basis as representative, because the rates from other coal-producing sections in Tennessee and from mines in Kentucky are established with relation to the rates from the Coal Creek mines. Thus, from the Jellico and Middlesboro groups of mines the rates are 10 cents per ton higher than from Coal Creek, and from mines in the vicinity of Ages, on the Wasioto & Black Mountain branch of the Louisville & Nashville, 20 cents per ton higher. Owing to the circuitous route of the Louisville & Nashville through Corbin rates to destinations in the southeast are not published from all mines served by it.

Under the present adjustment the rates from the Virginia fields to destinations in North Carolina and South Carolina are 10 cents per ton higher than the rates to those points from the Coal Creek district of Tennessee. A Southern Railway official states of record that the rates to all points within this territory have been made with the view to producing the maximum of tonnage and without regard to transportation conditions; and the rate relationship between the two fields is defended by all the interested carriers, except the Carolina, Clinchfield & Ohio, as being in the main economically sound and fair to all interests and as reflecting all the effects of competi-

tion by permitting the respective fields to share freely in the trade. The Southern Appalachian Coal Operators' Association, composed of operators, miners, and shippers of coal in eastern Tennessee and Kentucky, also defends the present advantage of the Tennessee district and urges that if any change is made it should be to increase the differential. It is asserted that the Tennessee coal can not compete freely with the Virginia coal for steam purposes at a differential of 10 cents a ton, and that in the territory where the Virginia rate is 10 cents higher than the Tennessee rate the Virginia coal predominates. From this it is argued that any reduction in the differential would deprive the operators in the Tennessee field of a fair opportunity to remain in the market and would impair the value of the property of the carriers reaching the mines in that district. On the other hand, the Carolina, Clinchfield & Ohio takes the position that because of the similarity in the transportation conditions from the two fields the differential between Tennessee and southwestern Virginia is on its face illogical and unjustly discriminatory and should be eliminated, even if reductions in its rates from the Virginia mines are necessary to accomplish this result.

The Appalachia district, by which term we refer to the western portion of the Virginia field, served particularly by the Virginia & Southwestern Railway, as distinguished from the eastern, or Dante, district, served by the Carolina, Clinchfield & Ohio Railway, includes mines in the Black Mountain and Toms Creek districts, and the relationship between the rates from those districts and the rates from the Coal Creek district to destinations in Georgia, Florida, and the Carolina territory has been before us in the past.

Before entering into a more extended discussion of the present matters in controversy it will be of interest to review the more important of the former proceedings.

In *Black Mountain Coal Land Co. v. S. Ry. Co.*, 15 I. C. C., 286, we had under consideration, in part, the proper differential to be observed as between the rates from the Black Mountain and Appalachia districts and Coal Creek to points south and east on the line of the Southern Railway. We reached the conclusion upon that record that the rates from Appalachia and Black Mountain to destinations as far south as Charleston and Augusta should not exceed by more than 25 cents the rates from Coal Creek to the same destinations, and the differential of 10 cents per ton from the mines in the Black Mountain district over the Appalachia rates was required to be discontinued.

The complaint in *Andy's Ridge Coal Co. v. Southern Ry. Co.*, 18 I. C. C., 405, involved relative rates on coal from the Coal Creek field to Carolina territory and to points in Georgia and Florida as com-

pared with the rates from the Appalachia field to the same destinations. The point in controversy with respect to Carolina territory was as to the propriety of an increase in the 25-cent differential established in *Black Mountain Coal Land Co. v. S. Ry. Co.*, *supra*. After the decision in that case was reached important changes in the transportation conditions took place; the distance from Appalachia to Carolina territory, which was formerly 93 miles greater than from Coal Creek, was reduced 60 miles by a cut-off of the Virginia & Southwestern Railway, and the Carolina, Clinchfield & Ohio Railway was constructed southward from the Dante coal field to Spartanburg in South Carolina. The construction of this line resulted in making the distance from the Dante field to practically all points in Carolina territory approximately the same as from Coal Creek, and the cost of the service, due to the substantial character of the construction of that line, its low grades and slight curvatures, was reduced to a minimum.

Upon a consideration of the record we reached the conclusion that an increase in the differential established in *Black Mountain Coal Land Co. v. S. Ry. Co.*, *supra*, was not justified. We found, however, that a differential of 25 cents between Coal Creek and the Appalachia field to destinations in Georgia and Florida territory was too small and should be widened to not less than 35 cents.

Following the *Andy's Ridge* case came the complaint in *Victor Mfg. Co. v. S. Ry. Co.*, 21 I. C. C., 222, which involved the reasonableness of an increase of 15 cents per ton in the rate from Coal Creek to Spartanburg. The differential of 35 cents to Georgia and Florida points has been effected by increasing the rates from the Appalachia field 10 cents per ton; but at the same time the rates from Coal Creek to Carolina territory were advanced 15 cents per ton, thereby reducing the differential to destinations within that territory from 25 cents to 10 cents. This advance of 15 cents from Coal Creek to Spartanburg, resulting in a rate of \$1.95 per ton, was the subject of the complaint in the case last mentioned, and upon investigation we found that rate to be unreasonable to the extent that it exceeded \$1.85 per ton. Thereafter the carriers readjusted the rate not only to Spartanburg, but to the entire Spartanburg group and related points, and retained the differential of 10 cents from Appalachia, or the Virginia & Southwestern's mines, by a reduction of 10 cents in the rates from that district and also from the Dante field.

To-day, therefore, the rates from the Virginia mines are 10 cents per ton higher than from the Coal Creek mines in Tennessee to practically all points in North Carolina and South Carolina, and to a strip of territory in Georgia and Florida east of a line beginning at Toccoa, in the former state, and extending southeastwardly to Jack-

sonville, in the state of Florida. To points on and west of a line beginning at Cohutta, in Georgia, and passing through Atlanta on the Southern Railway, and thence by way of the Georgia Railroad through Camak to Milledgeville and south to Jasper, in Florida, on the Atlantic Coast Line, the differential is 35 cents a ton in favor of Coal Creek. Between the territories described the Coal Creek field has a differential in its favor of 25 cents.

Spartanburg, in South Carolina, is the main gateway through which coal passes from the Virginia and Tennessee fields to the markets of that state and in the southeast generally. Tennessee coal reaches that gateway from Coal Creek by way of the Southern Railway through Knoxville, Morristown, and Asheville. The average distance over that route is 235 miles and the rate prescribed in *Victor Mfg. Co. v. S. Ry. Co.*, *supra*, is \$1.85 a ton, yielding 7.87 mills a ton-mile. Coal from the Dante field moves southward to Spartanburg by way of the Carolina, Clinchfield & Ohio, a distance of 244 miles, at a rate of \$1.95 a ton, which yields a revenue of 8 mills a ton-mile. From the Appalachia field the route to Spartanburg is by way of the Virginia & Southwestern Railway to Bulls Gap, thence Southern Railway through Morristown, a total distance of 256 miles. The average assembling distance from the mines in that field to Appalachia is 12 miles, and the average distance to Spartanburg thus becomes 268 miles. The advantage in favor of Coal Creek is therefore 9 miles as compared with Dante and 33 miles as compared with Appalachia, and for this advantage in the distance the rate from Coal Creek is 10 cents less.

It is conceded, however, that the operation of the Carolina, Clinchfield & Ohio is conducted under more favorable transportation conditions than are met with over either of the other two routes, and that, measured solely by the operating costs, the rate from Dante to Spartanburg instead of being 10 cents per ton higher should in fact be less than the rate from Coal Creek. We referred to the construction and operation of that road in *Andy's Ridge Coal Co. v. Southern Ry. Co.*, *supra*, and said, p. 408:

The Carolina, Clinchfield & Ohio Railroad has been constructed at very great expense and in the most approved manner. Its grades are extremely low, its curvatures comparatively slight, and its entire construction of the most substantial character. There are few roads in the whole United States upon which a locomotive of given rating can handle a larger gross tonnage than over most of the distance from Dante to Spartanburg.

A differential of 10 cents a ton against Dante and in favor of Coal Creek would therefore require for its justification some other grounds than the cost of the service or the difference in the distance. One argument advanced by the Southern Railway in justification for the maintenance of a differential in favor of Coal Creek is that

“regardless of all other conditions it is required to equalize natural disadvantages of the Tennessee district, the Coal Creek district, in competition with the Virginia field.” This very point was raised and disposed of in the case last cited, the Commission stating, p. 409, that such disadvantage must lie in the relative cost of production and that “in determining whether the Southern Railway and its connections unduly discriminate in their transportation charges from these competing mines to a common market (the Commission) can not undertake to equalize differences in cost of production, either natural or artificial.”

It is evident, as we have already observed in *Andy's Ridge Coal Co. v. Southern Ry. Co.*, *supra*, that the Appalachia field must have the same rate into Carolina territory as the Dante field. The coal from the two fields is of practically the same grade, and the distances are very nearly the same. Under the present method of routing, coal from the Appalachia district moves to Spartanburg by way of the Virginia & Southwestern to Bulls Gap, where it is delivered to the Southern Railway. The distance over this route is 33 miles greater than from Coal Creek, but the movement for approximately 160 miles of the total distance is the same in both cases. There is another available route, however, by which the distance between Appalachia and Spartanburg could be reduced to 237 miles, or but 2 miles greater than the distance between Coal Creek and Spartanburg. This route is by way of the Virginia & Southwestern to Speers Ferry, a distance of 28 miles, and thence over the line of the Carolina, Clinchfield & Ohio; and it is a practicable route now utilized for traffic to nearly all points in North Carolina east of Marion, and also through Spartanburg to points beyond on and east of the line of the Southern Railway extending through Columbia to Charleston. On traffic destined locally to Spartanburg, however, the Virginia & Southwestern, a subsidiary line of the Southern Railway, prefers to use the longer and more expensive route through Morristown, and thereby to conserve to itself the long haul.

The opening of the route to Spartanburg by way of Speers Ferry is sought in one of the proceedings merged with this general investigation, but we do not understand that this is a matter of importance to the shippers if the rate over the longer route is satisfactory. Moreover, the route of the Southern and Virginia & Southwestern railways through Morristown is not unreasonably long in comparison with the route through Speers Ferry, and under such circumstances we are limited under section 15 in the power of opening the route demanded. It is manifest, however, that the existence of a longer and somewhat more expensive route entirely over the rails of the Southern Railway and its subsidiary can not be considered as in any manner justifying

the maintenance of an unreasonable rate over the shorter line of the Carolina, Clinchfield & Ohio.

We are asked to establish a rate from Dante to Spartanburg of \$1.65 per ton, partly on the grounds that that in itself is a reasonably remunerative rate and partly because the Carolina, Clinchfield & Ohio publishes a rate of \$1.70 from Dante through Spartanburg to Atlanta, a considerably greater distance. This latter rate, which has been established upon the differential basis of 35 cents per ton over the rate from Coal Creek, as prescribed in *Andy's Ridge Coal Co. v. Southern Ry. Co., supra*, is made to meet competition from mines nearer Atlanta, and the departure from the provisions of the fourth section is protected by a fourth section order.

Upon a full consideration of all the facts of record, we conclude and find that the rate from the Appalachia and Dante districts, comprising the southwestern Virginia fields, to Spartanburg should not exceed \$1.85 per ton, and should in no event exceed the rate contemporaneously charged from the Coal Creek district to that point.

Marion, in the state of North Carolina, is another point of interchange between the Carolina, Clinchfield & Ohio and the Southern Railway, and is an important gateway for coal from the Coal Creek and Appalachia-Dante districts destined to points in North Carolina and South Carolina. The Carolina, Clinchfield & Ohio also connects with the Seaboard Air Line at Bostic, 28 miles south of Marion and in the same state, and Virginia coal reaches Carolina territory over the rails of that carrier. The average distances to Marion are: From Coal Creek, 207 miles; from Dante, 189 miles; and from Appalachia via Speers Ferry, 178 miles. The rate from the Appalachia group and from Dante to Marion is \$1.75 per ton and from Coal Creek \$1.85 per ton, but to points east of Marion this difference is reversed, and the rate from Coal Creek becomes 10 cents less than from Dante.

Traffic from the Coal Creek district and from the mines in southwestern Virginia, when destined to Carolina territory, converges at Spartanburg or Marion, and any differences in the transportation conditions which affect the through movement terminate with the arrival of the coal at either of those gateways. The transportation thereafter is identical, regardless of the point of origin. The record shows that the rates from Coal Creek form the basis upon which rates from Virginia have been established, and there is no contention that they are unreasonably low or unremunerative to the carriers. Having found that the differential in favor of Coal Creek should be eliminated at Spartanburg by a reduction in the rates from the Virginia mines, it follows that it should also be eliminated when the destination is a point beyond Spartanburg. We are not prepared to

say, however, that the difference of 10 cents in favor of the Virginia mines, applying on shipments consigned locally to Marion, should be extended to apply on traffic moving to all points east thereof by way of the Southern Railway. Upon consideration of all facts of record bearing upon the question we reach the conclusion and so find that the rates from the Appalachia and Dante districts to Carolina territory, including all points on and east of the line marking the western boundary of the present 10-cent differential zone, should not exceed for the future the rates contemporaneously charged from Coal Creek to the same destinations, and that the maintenance of any differential in favor of Coal Creek on traffic destined to points within that territory is unduly preferential of the Coal Creek district and unduly prejudicial of the southwestern Virginia mines.

Going westward from the line just mentioned the distances from Coal Creek decrease by reason of the shorter route through Atlanta, whereas from Dante the reverse is true. We see no reason for disturbing the relationship in the rates as between the Coal Creek and Virginia mines to points in the present 25 and 35 cent differential zones, especially since the 35-cent differential has been found to be reasonable on traffic destined to Atlanta and to other points where the same relative difference in distance obtains. No readjustment, therefore, will be required in the rates to points within those zones.

We come now to a consideration of the West Virginia fields and their rate relationship to the coal-producing districts of Virginia and Tennessee. The rates from the Virginia field are at present 10 cents per ton in excess of the rates from Coal Creek, but in the readjustment which we here require the carriers to make in their rates to the Carolina territory here in question this difference will no longer obtain and the two coal-producing sections will in the future be upon an equal footing.

The nearest source of supply of West Virginia coal for consumption in North Carolina and South Carolina is the Pocahontas district, which is reached by the Norfolk & Western Railway. The principal gateway for coal from that district to destinations in the south is Winston-Salem, and the distance to the gateway, including the average assembling distance from the mines, is approximately 262 miles. Coal from the New River district of the Chesapeake & Ohio reaches the south through Durham, and the distance by way of that route to Durham is 309 miles. The Virginian Railway also serves the coal fields of West Virginia and handles a large tonnage through Roanoke to Alta Vista, a junction with the Southern Railway, and thence to the southeast through Danville and Greensboro. The average distance from the mines to Greensboro is about 300 miles.

There are other points through which coal may reach the Carolina territory, but the principal gateways are the three just mentioned. The rates from the nearest, or Pocahontas, field determine the rates from the more distant fields, and the Chesapeake & Ohio invariably adopts, from its mines in the New River district, the rates applicable from the Pocahontas, Tug River, and Clinch Valley districts of the Norfolk & Western. The Virginian Railway also adopts the rates from the Pocahontas district in order to retain a share in the traffic.

The first attempt to establish a comprehensive relationship in the rates as between the West Virginia and Tennessee fields to destinations in the states of North Carolina and South Carolina was made in 1897. The basis then established provided for the fixing of rates with relation to the rates from the Coal Creek district and divided this territory into three zones. To all points in eastern North Carolina on and north of the Southern Railway from Wilkesboro, Winston-Salem, and Greensboro, excepting Greensboro, to Sanford, and thence by way of the Atlantic Coast Line through Fayetteville and Hope Mills to a point just west of Wilmington, the rates from West Virginia were made 20 cents per ton less than from Coal Creek. To the territory in North Carolina and South Carolina south or west of the line mentioned and on and east of the line of the Southern Railway from Winston-Salem through Charlotte and Columbia to Augusta the rates from West Virginia were made 35 cents higher than from Coal Creek. West of the last-described line the basis then adopted provided that the rates from West Virginia should be at least 55 cents per ton higher than from Coal Creek. During this time the movement from the Norfolk & Western and Chesapeake & Ohio mines was only in connection with the Southern Railway through Lynchburg or with the Seaboard Air Line and Atlantic Coast Line through Richmond or Petersburg. Subsequently the Norfolk & Western acquired the line from Roanoke to Winston-Salem, which materially shortened the distance to the south, and the routing of coal was diverted to the shorter line. The relationship outlined above remained practically undisturbed until after the opening of the Carolina, Clinchfield & Ohio Railway in December, 1909.

We have already referred to the adjustment that took place following our decision in *Victor Mfg. Co. v. Southern Ry. Co.*, *supra*, under which the carriers, in order to retain the 10-cent differential between the Virginia and Tennessee fields, reduced the rates 10 cents per ton from Appalachia and Dante to Spartanburg and to the southeast generally. The reductions from the Virginia mines brought about corresponding reductions from the West Virginia field to many points of destination in Carolina territory, and the completion of the Winston-Salem Southbound Railway, extending from Winston-Salem

to Wadesboro, together with the decisions of the Commission with respect to rates to specific points, have materially modified the original adjustment. The present adjustment is roughly described of record as follows:

To points in North Carolina on and north of the line of the Southern Railway beginning at Wilkesboro and extending through Winston-Salem to Greensboro, Durham, Raleigh, and Goldsboro, thence to Morehead City on the Norfolk & Southern, the rates from West Virginia are the same as the rates from Coal Creek, with the exception of Winston-Salem, Durham, and a few other points where a different relationship obtains because of our orders in certain formal complaints. To points south of the line just described upon and east of the Southern Railway to Salisbury and east of the line of that carrier from Salisbury to Charlotte, thence on and north of the Seaboard Air Line between Charlotte and Wadesboro, and the Atlantic Coast Line from Wadesboro by way of Cheraw to Florence and Georgetown, the rates from West Virginia are 10 cents per ton higher than the rates from Coal Creek. To Salisbury and points on the Southern Railway main line between Salisbury and Charlotte, and thence by way of Columbia to Augusta and intermediate to the second line described, the rates from West Virginia are 20 cents per ton higher than the rates from Coal Creek. Farther to the west the differential in favor of the Coal Creek district increases.

The description outlined above shows in a general way the existing relationship between the Coal Creek and Pocahontas fields, but owing to the network of lines extending in all directions through the Carolinas there are many groups of destinations where this relationship is not observed. As a general proposition it appears that relative distances have played but a small part in bringing about the present adjustment, and that where the distances are materially in favor of the Pocahontas field the rates therefrom are no lower, if as low, as the rates from the Coal Creek district, except to points in the extreme eastern part of the state of North Carolina, where no Tennessee coal is sold.

The line of approximately equal distances from Coal Creek and Pocahontas, where a parity in rates would reasonably be expected to exist, begins at Barber Junction, in North Carolina, and extends in a southeasterly direction through Salisbury and Wadesboro to Florence, in South Carolina. The following table gives the rates and distances from the respective fields to a few representative points upon this line and shows that as to all such points the rates from Coal Creek are less than from Pocahontas except to Georgetown.

ST L. C. C.

where they are the same. The distances are taken from an exhibit filed of record by the Carolina, Clinchfield & Ohio Railway, and although they may not be entirely accurate such discrepancies as exist are inconsequential:

To—	Distances from—		Rates from—		Difference in—	
	Coal Creek.	Poca-hontas.	Coal Creek.	Poca-hontas.	Distance.	Rates.
	<i>Miles.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
Barber Junction, N. C.....	296	302	2. 15	2. 35	6	0. 20
Salisbury, N. C.....	307	313	2. 15	2. 35	6	. 20
New London, N. C.....	331	318	2. 25	2. 40	1 13	. 15
Norwood, N. C.....	348	331	2. 25	2. 40	1 17	. 15
Wadesboro, N. C.....	364	351	2. 30	2. 40	1 13	. 10
Cheraw, S. C.....	407	376	2. 30	2. 40	1 31	. 10
Darlington, S. C.....	411	406	2. 30	2. 40	1 5	. 10
Florence, S. C.....	411	416	2. 30	2. 40	5	. 10
Lanes, S. C.....	412	465	2. 30	2. 40	53	. 10
Georgetown, S. C.....	448	501	2. 40	2. 40	53	.....

1 Pocahontas less than Coal Creek.

No conclusive argument has been advanced in our judgment to show why, from a transportation standpoint, coal from the two fields should not meet upon relatively equal terms at this common dividing line. It is urged that, inasmuch as the route from the New River district of the Chesapeake & Ohio involves a longer movement by way of Lynchburg and Durham to a majority of the destinations in Carolina territory, a higher rate from all West Virginia mines is justified. To follow out this principle to its logical conclusion would often result in abnormally high rates from the nearest satisfactory source of supply in order that a greater return per mile could be obtained by a road less advantageously located. What is a reasonable rate from one section might be far from a reasonable rate from another section served by a different carrier and involving an entirely different movement to reach the same markets. But in such a case it is within the option of the longer line either to meet the rate of the shorter or to retire from participation in the traffic.

In the original adjustment of 1897 points on and north of the line of the Southern Railway from Winston-Salem through Greensboro, Durham, Raleigh, Selma, and Goldsboro were in the zone in which the rates from West Virginia were fixed at 20 cents per ton less than the rates from Coal Creek. The present adjustment is shown in the following table, from which it will be observed that although the distances are materially in favor of the Pocahontas field, this advantage is reflected in the rates at but two points, namely, Winston-Salem and Durham, and to both of those points the rates have been established under the orders of this Commission. The distances, as in the pre-

vious table. are taken from an exhibit filed by the Carolina, Clinchfield & Ohio Railway, and are as follows:

To—	Distances from—		Rates from—		Difference in—	
	Coal Creek.	Pocahontas.	Coal Creek.	Pocahontas.	Distance	Rate
	Miles.	Miles.	Cents.	Cents.	Miles	Cents
Winston-Salem.....	323	262	2.30	2.10	74	0.20
Greensboro.....	376	291	2.30	2.30	85	
Durham.....	411	309	2.30	2.30	102	
Raleigh.....	437	335	2.30	2.30	102	
Selma.....	453	353	2.40	2.40	172	
Goldsboro.....	486	384	2.40	2.40	102	

Winston-Salem is, as we have heretofore stated, the principal gateway through which coal from the Pocahontas district moves to points in Carolina territory, and the present rate of \$2.10 per ton was established by us in *Board of Trade of Winston-Salem v. N. & W. Ry. Co.*, 16 I. C. C., 12. Prior to our order in that proceeding the rate was \$2.30 per ton. In a later proceeding challenging the reasonableness of the rate of \$2.10, *Board of Trade of Winston-Salem, N. C., v. N. & W. Ry. Co.*, 26 I. C. C., 146, we reaffirmed our former conclusion and declined to further reduce that rate, stating, p. 150, that—

The testimony of complainants in case No. 4717 is cumulative of that in the former case and shows no substantial change in the conditions prevailing in 1909, and considering the circumstances and conditions surrounding this traffic, the nature of the branch line from Roanoke to Winston-Salem, and the sparsely settled region traversed, we are not convinced that the present rate to Winston-Salem, yielding what on its face appears to be a liberal revenue to the carrier, is excessive or unreasonable, in violation of the provisions of the act to regulate commerce.

Winston-Salem is again before us in the proceeding now under consideration with a prayer for a reduction in the rate from the Pocahontas district and also from the coal-producing fields of Virginia and Tennessee, but no conclusive showing has been made that the rate of \$2.10, which has twice been affirmed, is now unreasonable. We do find upon this record, however, that the present rate of \$2.30 to Greensboro, a point on the Southern Railway intermediate to Winston-Salem and Durham and approximately 291 miles from the Pocahontas district, should not exceed the rate contemporaneously charged from the same district to Durham.

In order not to extend this report unduly it will suffice to say without further discussion that upon the whole record we reach the conclusion, and so find, that the following adjustment will afford a more equitable relationship between the Pocahontas and Coal Creek districts in the states of North Carolina and South Carolina:

To points on and north of the line of the Southern Railway from Winston-Salem through Greensboro, Durham, Raleigh, and Selma

to Goldsboro, the rates from the Pocahontas district should be not less than 20 cents per ton lower than the rates from Coal Creek. To points in the territory south of this line and on and east of a line beginning at Barber Junction and passing through Salisbury, Norwood, Wadesboro, Florence, and Lanes to Georgetown, the rates from the Pocahontas and Coal Creek fields should be the same. West of the last-mentioned line and on and east of a line extending through Charlotte, Chester, Columbia, and Denmark to Charleston the rates from the Coal Creek district should be not less than 20 cents per ton lower than the rates from the Pocahontas district. To points west of the latter line a greater differential may properly be observed, but the necessity of establishing another differential zone is not apparent, since the record indicates that the movement of coal from the West Virginia fields is principally to the territory east of Charlotte and Columbia. There is, however, a considerable movement of West Virginia coal to Augusta, and at that point the differential is 35 cents per ton.

The Carolina, Clinchfield & Ohio Railway has suggested the establishment of seven zones in this territory on the basis of an increase in the rates of 5 cents per ton for each increase of 25 miles in distance, the distances being the average mileages over all routes serving the various coal fields. This method has been severely criticized by the other carriers, and upon the whole we are of the opinion that a readjustment substantially on the basis indicated in the foregoing paragraph will bring about a better relationship with the least disturbance of the existing rate structure. We recognize that the complexities growing out of the geographical location of the many carriers serving North Carolina and South Carolina are such as to make it necessary to proceed with caution in laying down any hard and fast differential basis, and for that reason we shall not issue an order at this time, but shall expect the carriers to lay before us on or before March 15 next their views as to the differentials indicated and their plans for complying with these findings, with their suggestions as to any fourth section questions that may be involved.

In the preceding discussion of the rates from the Pocahontas field we have considered only the movement through Winston-Salem. There is, however, another practicable route from that field to destinations on the Southern Railway in South Carolina in the vicinity of Spartanburg. This is by way of the Norfolk & Western to St. Paul, in Virginia, a distance of 101 miles, thence over the line of the Carolina, Clinchfield & Ohio. The distance to Spartanburg over the route in connection with the Carolina, Clinchfield & Ohio is 333 miles, as compared with 421 miles by way of Winston-Salem, thus effecting a saving of over 20 per cent in the distance to Spartanburg and to many points in the south. The Carolina, Clinchfield & Ohio has

expressed of record its willingness to enter into joint arrangements with the Norfolk & Western for the movement of coal over the St. Paul route, but the latter objects on the ground that it would result in giving it a shorter haul than it now enjoys on traffic routed through Winston-Salem. It is also asserted that the facilities of the Norfolk & Western are not adjusted to operate by way of St. Paul, and that the movement of coal through that point would cause congestion in the assembling yards at Bluefield.

There is not much force in these objections, however, especially in view of the fact that there is now a physical connection between the rails of the two carriers at St. Paul, and the Norfolk & Western publishes rates on coal from the Pocahontas district through St. Paul to a connection with the Louisville & Nashville at Norton. The present rate on coal from the Pocahontas field to Columbia, a distance of 454 miles by way of Winston-Salem, is \$2.35 per ton, and the average distance to all points taking that rate is 358 miles, or 25 miles greater than the distance to Spartanburg by way of St. Paul. Under all the circumstances we are of the opinion that the route through St. Paul to points on the Carolina, Clinchfield & Ohio should be opened and that the joint rate from the Pocahontas district to such points and to Spartanburg applicable thereover should not exceed \$2.35 per ton.

There remains for consideration in this report the complaint against the present rate of \$1.50 per net ton from the mines in the Pocahontas and New River districts to Lynchburg. It is alleged that this rate is unreasonable *per se* in that it greatly exceeds the cost of the service and yields per ton and per car-mile revenues higher than are received from the carriage of all freight on the entire systems of the respondents, and because it exceeds the rates charged from the same producing districts to other points of equal or greater distances. Undue discrimination is also alleged, and is predicated upon the fact that the same rate which is assessed at Lynchburg is extended east to points in Hampton Roads, a distance of 204 miles, thereby producing an unduly wide blanket zone and depriving the city of Lynchburg of its advantage of proximity to the coal fields. The distance to Lynchburg from both the Pocahontas and New River fields is approximately 205 miles, and the rate of \$1.50 per ton yields a ton-mile return of 7.32 mills. The respondents maintain that that figure does not in fact represent the actual revenue per ton-mile, inasmuch as on at least 50 per cent of the coal tonnage destined to Lynchburg it is necessary to absorb a switching charge of \$3 per car to complete delivery. Furthermore, there is no return loaded movement.

The real cause for the complaint at Lynchburg appears to lie in the fact that it is the first city of importance in the extensive blanket zone to which the rate of \$1.50 applies. The maintenance of so large a zone is explained by the carriers in this manner: The rate of \$1.50 a ton applying to points on the Atlantic seaboard, which yields a ton-mile revenue of but 3.67 mills in the case of the Norfolk & Western and 3.44 mills in the case of the Chesapeake & Ohio, is induced by competition with coal forwarded by way of Baltimore and vessels plying between that port and points in Hampton Roads. The rate from the Cumberland-Piedmont coal district to Baltimore, added to the water rate, fixes the rate from the West Virginia fields of the Norfolk & Western and Chesapeake & Ohio, and in accordance with the policy of those carriers with respect to the observance of the provisions of the fourth section that rate is not exceeded at any intermediate point. This, however, does not entirely explain the rate to Lynchburg, the point herein involved. The fact that necessity compels the maintenance of subnormal rates at remote points upon their lines does not justify the carriers in offsetting this condition by the imposition of unreasonably high rates at the nearer points. The nearer point, in this case Lynchburg, is entitled to a reasonable rate regardless of the circumstances which have been influential in determining the rates to such points as Norfolk and Newport News, over 400 miles distant from the same coal fields.

The record shows that the average ton-mile revenue of the Chesapeake & Ohio on all traffic for the fiscal year ended June 30, 1913, was 4.12 mills, and of the Norfolk & Western but little higher. For the same year the average revenue per ton-mile of the Chesapeake & Ohio on bituminous coal was 3.15 mills. The complainants compare these averages with the ton-mile revenue of 7.32 mills under the rate of \$1.50 and ask a reduction to \$1 per ton. We are not convinced that the circumstances warrant so radical a change in the present rate, but upon the showing made of record it will suffice to say without further elaboration that we are of the opinion that this group of destinations is broader than the circumstances require or justify and that the Lynchburg rate should not for the future exceed \$1.40 per ton. The rate to Roanoke is \$1.30 a ton.

In this report, dealing as it does mainly with relative rates to many hundred destinations, we have deemed it unnecessary to detail at length the various contentions and arguments of the parties in interest. The facts presented and the numerous exhibits filed of record have all been carefully considered, however, in arriving at our conclusions. The rates to a number of points in this general territory are before us specifically in petitions merged with the general investigation, and will, of course, be controlled by the readjustments

we have required herein. In order to avoid any misunderstanding on the part of the carriers, however, as to how these readjustments shall be accomplished, it should be stated here that the present level of the rates from Coal Creek must in the main serve as a guide in determining the proper rates from the Virginia and West Virginia fields. Under the circumstances and in view of the nature of this proceeding, the prayers for reparation in the several petitions involved herein will be denied. The disposition of this proceeding has been delayed by the pendency of other complaints in which related questions were involved, and the general findings herein made will be subject to such modifications as may be required under the report and order in *Black Mountain Corporation v. L. & N. R. R. Co.*, Docket No. 5992, now pending.

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No. 7678.¹
ARIZONA STORES COMPANY
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

Submitted May 17, 1915. Decided January 3, 1916.

Upon complaints asking reparation on account of rates charged on shipments of flour and mixed shipments of flour and corn meal in carloads to Kingman and Winslow, Ariz., from Kansas, Nebraska, Minnesota, Missouri, and Colorado points; *Held*, for reasons stated in the report, that reparation should be denied. Complaints dismissed.

W. A. Nunlist and W. C. Donnelly for complainants.
T. J. Norton and E. W. Camp for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants in No. 7678 and No. 7678 (Sub-No. 2) are corporations dealing in general merchandise in Kingman, Ariz. The individual complainant in No. 7678 (Sub-No. 1) is in like business at Winslow, Ariz. By complaints, filed January 18, 1915, they allege that the rates charged by defendants for the transportation of certain carload shipments of flour and corn meal to Kingman and Winslow from Kansas City, Mo., Marshall, Minn., and points in Kansas, Nebraska, and Colorado, during the period from November 15, 1911, to August 5, 1914, were unreasonable. Reparation is asked and the establishment of a rate of 65 cents per 100 pounds, minimum 30,000 pounds.

The points of origin and initial carriers of the shipments are not disclosed, and it is possible that necessary parties defendant have not been joined. The shipments in No. 7678 and in Sub-No. 2 appear to have been milled in transit, some at Lyons, Kans., others at Lamar, Colo., and waybilled from these milling points to Kingman. A rate of \$1.12 per 100 pounds, minimum 30,000 pounds, was applied, except that on the corn meal in one mixed shipment the rate was \$1.36. The shipments in Sub-No. 1 appear to have been milled in transit at Great Bend, Kans., and waybilled from there to Winslow under a rate of \$1.11, minimum 30,000 pounds. Some of the shipments were delivered more than two years before the complaint was filed and the claim for reparation as to those, except as presented informally to the Commission September 30, 1914, is barred by the statute of limitations.

¹ This proceeding also embraces complaints in—No. 7678 (Sub-No. 1), *Charles Cahn v. Same*; and No. 7678 (Sub-No. 2), *Gaddis & Perry Company v. Same*.

Complainants admit that their principal reason for instituting these proceedings was to get reparation to which they conceived that they were entitled as a result of our decisions in the *Intermountain cases: Railroad Commission of Nevada v. S. P. Co.*, 21 I. C. C., 329; and *City of Spokane v. N. P. Ry. Co.*, 21 I. C. C., 400; affirmed in *Intermountain Rate Cases*, 234 U. S., 476.

Kingman and Winslow are intermediate to the Pacific coast defendant's main line, and under the decisions just cited are entitled to rates on flour from Kansas and other states west of the Missouri River as low as over the same lines to California terminals. In *Arizona Corporation Commission v. A. & N. M. Ry. Co.*, 29 I. C. C., 424, moreover, we held that rates on flour from Kansas, Oklahoma, Nebraska, Colorado, Iowa, and Missouri to points in Arizona were unreasonable and unduly prejudicial to the extent that they exceeded the rate concurrently in effect from the same points to California terminals, which was then 65 cents per 100 pounds, minimum 50,000 pounds. Later, in *Kansas-California Flour Rates*, 32 I. C. C., 602, we held justified a proposed increase from 65 cents to 75 cents per 100 pounds, minimum 50,000 pounds, in the rates on flour from points in Kansas, Nebraska, and neighboring states to California terminals, not to be exceeded at intermediate points. A 75-cent rate applies at present from Kansas points and other points to both Kingman and Winslow.

Nearly all of complainants' shipments weighed less than 31,000 pounds, and thus 19,000 pounds less than the minimum required under the rates then applicable to California terminals. There is no evidence that 50,000 pounds was or is an unreasonable minimum. The present 75-cent rate, at the new minimum weight of 50,000 pounds, earns \$375 per car, which is more than the charge collected on any, except one, of complainants' shipments. No one personally familiar with the facts relative to the shipments appeared or testified at the hearing.

Complainants compare the rate assailed from Great Bend to Winslow with rates on flour from Great Bend and other points to points in Montana, Idaho, and Oregon, ranging from 52 to 67 cents per 100 pounds. Some of the rates cited in comparison require a minimum carload of 30,000 pounds, but most of them 40,000 pounds. The transportation conditions, however, are not shown to be substantially similar. Montana, Idaho, and Oregon are much more populous states than Arizona and originate both wheat and flour shipments. The density of traffic generally is not shown, nor the density of the traffic in flour relatively to the traffic to Arizona.

We find that complainants have not established their right to reparation, and the complaint will be dismissed.

No. 7680.

BROWN-ROBERTS HARDWARE & SUPPLY COMPANY,
LIMITED,

v.

ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

FOURTH SECTION APPLICATION No. 461.

Submitted May 29, 1915. Decided December 24, 1915.

1. Rates on iron and steel lumber wagons in carloads from Quincy, Ill., to Alexandria and Lake Charles, La., found to be unreasonable.
2. Carriers directed to revise their rates on iron and steel lumber wagons from Quincy to other points in the lumber-producing districts of Louisiana on a basis not higher than the present rates on a type of iron and steel farm wagon described in the report.

H. J. Fernandez for complainant.

F. G. Wright for Missouri Pacific Railway Company, St. Louis, Iron Mountain & Southern Railway Company, and other carriers in the southwest.

J. E. Carter for Morgan's Louisiana & Texas Railroad & Steamship Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

This complaint involves the rates on iron and steel lumber wagons from Quincy, in the state of Illinois, to certain destinations in the state of Louisiana, of which Alexandria is typical, and will be so considered throughout the report. On some shipments made to that point the complainant has been charged the joint through class A carload rate of 74 cents per 100 pounds, while on others the joint through commodity rate of 71 cents has been assessed. The latter rate is applicable to "vehicles, exclusive of self-propelling and children's vehicles—and parts thereof," while the former is applicable to "vehicles, freight, not otherwise indexed by name, including farm wagons and farm trucks; also finished parts thereof, straight or mixed carloads; minimum weight 20,000 pounds."

The wagons manufactured by the complainant are used by lumbermen; they are made entirely of iron and steel and consist merely of the wheels and underframes, with four corner uprights. While

asserting that the rate properly applicable on these wagons is the commodity rate of 71 cents, the complainant alleges that both the commodity rate and the class rate are unreasonable in so far as they exceed a commodity rate of 51 cents contemporaneously applicable on iron and steel farm wagons from Quincy to Alexandria. The latter rate applies on farm wagons whether they be shipped in straight carloads or in mixed carloads with agricultural implements. Such farm wagons are frequently shipped and sold without the accompanying bed, and when so shipped differ from the lumber wagons manufactured by the complainant in minor details only. The defendant concedes the similarity between the two vehicles, but objects to the application of the farm wagon rate to shipments of lumber wagons because of the lesser volume of the movement of lumber wagons and because of the further fact that this rate on farm wagons was established and was intended to apply only on articles used in the development of agriculture. The rates were made, as the carriers assert, as special concessions to farmers and as an aid in the building up of that section of the country.

While it is true that the rate applicable to farm wagons and the agricultural implement mixture has been in effect for a number of years, the question now before us is whether the lumber wagon is so similar to the farm wagon as by comparison to entitle it to the farm wagon rate. We say this because the primary allegation in the complaint is not one of discrimination or of undue preference, but rather that the rate on the lumber wagons is unreasonable.

These wagons have recently been introduced in the lumber industry and their use is said to have effected a substantial reduction in the handling cost of lumber. Based on the class A rate of 74 cents, the freight on a lumber wagon from Quincy to Alexandria is \$7.15; on the commodity rate of 71 cents the freight is \$6.89, the wagons weighing approximately 970 pounds. In accordance with the long established practice of constructing rates from the defined territories to the southwest, the rates from Quincy, which is in the Omaha-Davenport group, are constructed by adding certain differentials to the rates from St. Louis. Although farm wagons in the western classification take class A rates, and the class A differential to Alexandria is 5 cents per 100 pounds, a special differential of 1 cent per 100 pounds has been made on farm wagons from Quincy in order to enable the manufacturers at that point to compete with the manufacturers at Hannibal, in the state of Missouri, the latter point being accorded the St. Louis rate basis. The rate from Quincy to Lake Charles, south of Alexandria, is 56 cents. The rates on lumber wagons from Quincy to many other Louisiana points are made by adding the intermediate rates to and from Lake Charles or the

Shreveport group or the lower Mississippi River crossings. To some points in Louisiana the aggregates of intermediate rates to and from the lower crossings on these wagons are said to be lower than the joint rates. The complainant asks for a rate on lumber wagons, to Alexandria and all lumber-producing points north thereof, not in excess of the present commodity rate of 51 cents, and to all points south of Alexandria, to and including Lake Charles, a rate not in excess of 56 cents, the rates suggested being those now applicable on farm wagons from Quincy to the respective destinations. This adjustment, the complainant suggests, would involve an increase in some cases.

These suggestions by the complainant are based upon its desire to place all lumber mills in the same general section of the southwest on the same rate basis. No such blanket adjustment has been made effective by the carriers on farm wagons, and no reason, transportation or otherwise, is shown of record for requiring such an adjustment on lumber wagons. The complainant sells farm wagons also, and the record shows that their average value is about the same as that of the lumber wagons, but that the latter load more heavily. The record indicates, however, that at many points at which there are sawmills there is no demand for farm wagons, and therefore no commodity rate to those points. Under these circumstances we shall fix only the maximum rates to Alexandria and Lake Charles. To those points we find and conclude that the rates from Quincy on the lumber wagons here under consideration are unreasonable to the extent that they exceed rates of 51 and 56 cents, respectively, in carloads, being the rates that the defendants for some time have voluntarily maintained on farm wagons. The complainant is willing that a minimum of 36,000 pounds shall be fixed on shipments of its lumber wagons, although the minimum weight on farm wagons is but 24,000 pounds; a carload minimum weight of 36,000 pounds may, therefore, be established with the rate here found reasonable. We shall also expect the carriers to readjust their rates to other stations in Louisiana to which these lumber wagons may be shipped on a basis not in excess of that now applicable on farm wagons. Reparation is asked on past shipments. We conclude upon the whole record that this should not be granted. It follows, however, from what has been said that the commodity rate of 71 cents, and not the class A rate of 74 cents, should have been charged and collected on the shipments here involved. Those shipments upon which the rate of 74 cents has been collected have, therefore, been overcharged, and the defendants will be expected promptly to refund the proper amount.

That part of Fourth Section Application No. 461 which seeks authority to continue through rates on iron and steel wagons and

through class A rates from Quincy to Alexandria and other points in Louisiana which exceed the aggregate of intermediate rates to and from New Orleans, Vicksburg, and Natchez was set for hearing with the complaint. The record upon this phase of the case developed upon the hearing is inadequate upon which to base a finding. The same general question is before us in other cases involving similar departures from this provision of the fourth section in connection with rates to other southwestern points. The records in those cases are comprehensive, and the decisions therein will be controlling in principle here.

An order will be entered in accordance with the foregoing findings and conclusions.

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No. 7805.

SHELBYVILLE BUSINESS MEN'S ASSOCIATION

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

FOURTH SECTION APPLICATION No. 1952.

Submitted July 13, 1915. Decided December 24, 1915.

Upon complaint that the defendants' class rates, and many of their commodity rates, between Shelbyville, Ky., and interstate points, are unreasonable and unjustly discriminatory because of the alleged unreasonableness and discriminatory character of the factors between Louisville, Ky., and Shelbyville, and that the rates do not conform to the long-and-short-haul provision of the fourth section of the act; *Held*, That—

1. The rates between Louisville and Shelbyville, applicable to interstate transportation, are not shown to be unreasonable.
2. The class rates between Louisville and Shelbyville, applicable to interstate transportation, found to be unjustly discriminatory to the extent that they exceed the corresponding class rates contemporaneously maintained, and applicable to interstate transportation, between Louisville and Lexington, Ky., or between Louisville and Georgetown, Ky.
3. Rates on certain commodities between Louisville and Shelbyville, applicable to interstate transportation, found to be unjustly discriminatory to the extent that they exceed the rates on the same commodities, applicable to interstate transportation, between Louisville and Georgetown, Midway, Lexington, or Paris, Ky.
4. Class and commodity rates between Louisville and Shelbyville, applicable to interstate transportation, not shown to be unjustly discriminatory as compared with the rates between Louisville and Frankfort, Ky.
5. Defendants granted authority to continue lower class and commodity rates between Louisville, Ky., and Frankfort, Ky., on interstate traffic, than the rates contemporaneously in effect between Louisville and Shelbyville. Authority to continue lower class and commodity rates between Louisville and Georgetown, Midway, and Lexington, Ky., than between Louisville and Shelbyville, Ky., denied.

L. B. Wehle and Wehle & Wehle for complainant.

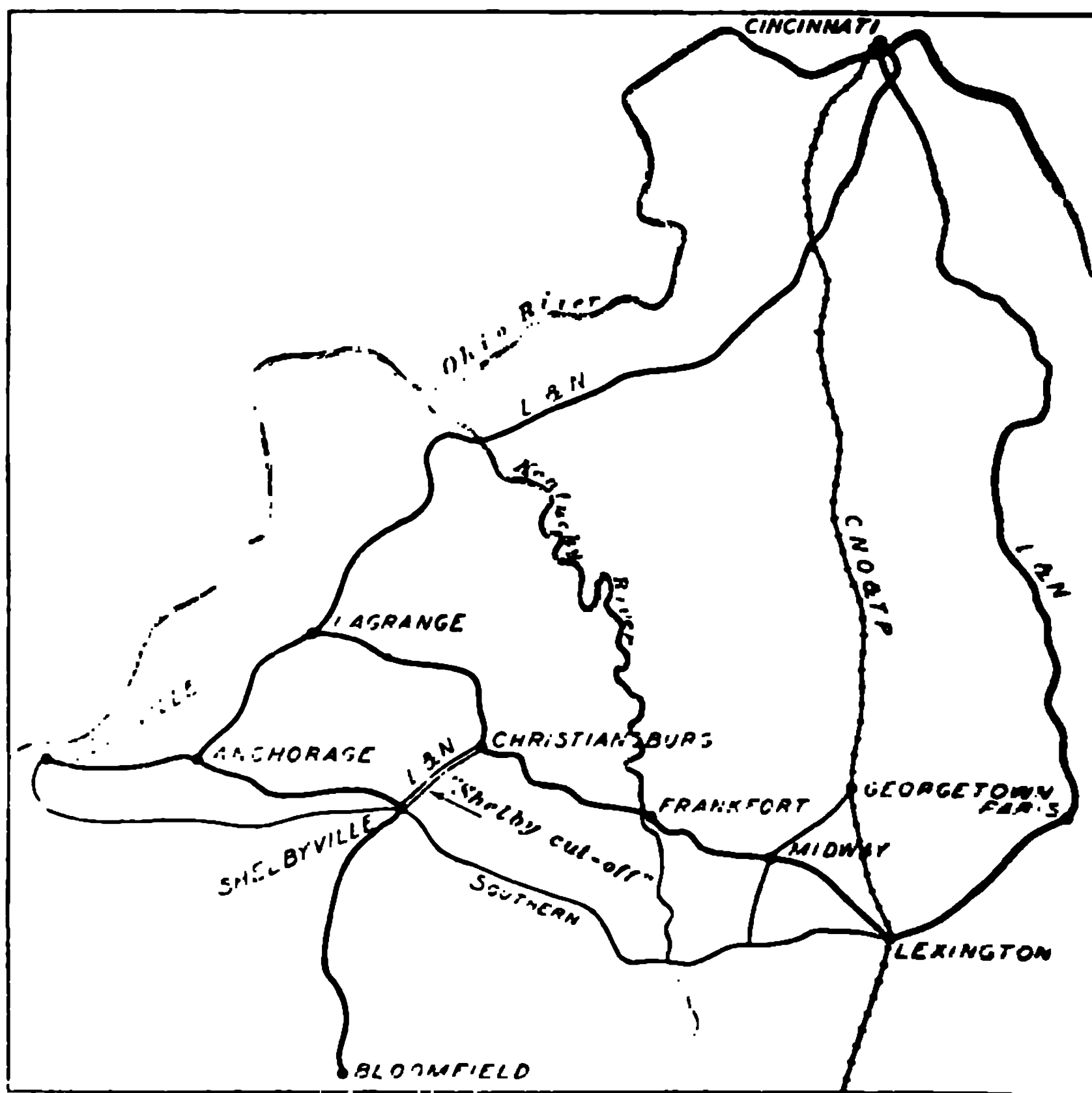
William Burger and N. W. Proctor for Louisville & Nashville Railroad Company.

C. J. Rixey, jr., for Illinois Central Railroad Company and Southern Railway Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

The complainant, a voluntary association organized for the purpose of promoting the commercial interests of Shelbyville, in the state of Kentucky, alleges that the defendants' class rates and a large number of their commodity rates between Shelbyville and points in other states through Louisville are unreasonable, unjustly discriminatory, and in violation of the long-and-short-haul provision of



the fourth section of the act. There was heard in connection with the case that part of the Louisville & Nashville Railroad's Fourth Section Application No. 1952 which seeks authority to continue lower interstate rates through Louisville to and from Frankfort, Georgetown, Midway, and Lexington than the rates concurrently applicable on like traffic to and from Shelbyville and other intermediate points. The evidence was confined to the rates between Louisville and the Kentucky points named, as parts of the through rates assailed. The principal points involved are shown on the plat.

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Shelbyville is a town of about 5,000 inhabitants located east of Louisville on the Louisville & Nashville Railroad and the Southern Railway. The distance from Louisville to Shelbyville is 31 miles over the Louisville & Nashville Railroad and 40 miles by way of the Southern Railway. The surrounding country is devoted almost entirely to agriculture and cattle raising. There are a number of jobbers at Shelbyville who distribute merchandise to neighboring towns, both by rail and by wagon, in competition with jobbers located at Frankfort, Georgetown, Midway, and Lexington. The disadvantage of the Shelbyville jobbers, which constitutes the basis of the complaint, is due principally to the fact that a number of the class and commodity rates between Louisville and Shelbyville, on interstate traffic, are higher than the corresponding rates to the more distant competing points. The rates to and from these points are made by combination on Louisville. The extent of Shelbyville's disadvantage, so far as the class rates are concerned, is indicated in the following table:

Between Louisville, Ky., and	Miles	C	%		
Shelbyville, Ky.	31	9	%		
Frankfort, Ky.	65	6			2
Lexington, Ky.	94	10			2
Georgetown, Ky.	88	10			2

¹ Through Lagrange.

It will be noted that nearly all the class rates between Louisville and Frankfort are lower than the corresponding rates between Louisville and Shelbyville, while the Lexington and Georgetown rates are lower only in a few instances. The complainant also directs our attention to the fact that the distance from Louisville to Shelbyville is less than half as great as the distances from Louisville to the other points.

The defendants maintain that the rates to Shelbyville can not be deemed unjustly discriminatory as compared with the rates to Frankfort, because the water competition at Frankfort is so severe as to make necessary somewhat lower rates to and from that point than to and from Shelbyville. The distance from Louisville to Frankfort through Lagrange, as shown above, is 65 miles. It is shown that two boats are at present operating between Louisville and Frankfort on the Ohio River and on the Kentucky River and that actual and

potential water competition, which has existed for years, is responsible for the lower rates to Frankfort than to Shelbyville. No such competitive conditions exist at Shelbyville, and we therefore find that the lower class and commodity rates from Louisville to Frankfort applicable to interstate transportation, than the rates contemporaneously maintained from Louisville to Shelbyville do not result in unjust discrimination against the latter point.

At the other junction points—Lexington, Midway, and Georgetown—it is said that the competition with the rail carriers from Cincinnati depresses the rates. The record shows that the competition between Louisville and Cincinnati for these Kentucky markets has always been severe. The evidence is that the Cincinnati Southern, now the Cincinnati, New Orleans & Texas Pacific Railway, was originally constructed by the city of Cincinnati for the express purpose of giving Cincinnati an advantage over Louisville in reaching these interior Kentucky points, and that the lines running east from Louisville found it necessary to depress their rates to meet the competition which resulted. The distances from Louisville to Lexington and Georgetown are greater than the distances to the same points from Cincinnati, as shown in the following table:

From—	To Lexington.	To Midway.	To Georgetown.
	Miles.	Miles.	Miles.
Cincinnati	50	73	68
Louisville	54	80	81

While it is true that the competition between Louisville and Cincinnati is severe, the above table shows that the distances from Louisville to Lexington and Georgetown do not greatly exceed the distances from Cincinnati. The record shows that the Cincinnati, New Orleans & Texas Pacific Railway applies its Lexington and Georgetown rates as maximum rates at intermediate points, as does also the Louisville & Nashville Railroad, with some exceptions, on its line running south from Cincinnati. If these carriers can maintain a rate of 13 cents, for example, on fifth-class traffic from Cincinnati to Georgetown, a distance of 68 miles, without exceeding it at intermediate points, it does not appear that the Louisville & Nashville Railroad, if it desires to establish the same rate to Georgetown by its longer route, should charge a higher rate to Shelbyville, which is only 31 miles from Louisville.

There is little, if any, evidence of record tending to show that the Louisville & Nashville Railroad is justified in charging higher rates

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on certain commodities to Shelbyville than to Midway. The distance from Louisville to Midway through Lagrange is 80 miles. The distance from Cincinnati to Midway through Georgetown is 78 miles. The distance to Midway from Louisville through Shelbyville is 9 miles less than the distance from Cincinnati to Midway. The defendants have attempted to show that Midway is one of the "interior Kentucky junctions" whose rates are depressed by the Cincinnati competition. In this connection, however, it is interesting to observe that in *S. J. Greenbaum Co. v. L. & N. R. R. Co.*, 31 L. C. C., 699, in which the complainant, located at Midway, alleged that certain rates to and from Midway were unjustly discriminatory, the Louisville & Nashville Railroad maintained in its brief that while the rates to Lexington and other junctions were depressed by the competition from Cincinnati, resulting from the construction of the Cincinnati Southern, the situation was quite different at Midway, the competitive conditions at the other points being "so substantially and, indeed, vitally different from those existing at Midway as to leave no basis or foundation for a holding of unjust discrimination or of undue prejudice against Midway in favor of Louisville or Lexington." We are of the opinion and find that the present class rates from Louisville to Shelbyville, applicable on interstate traffic, are unjustly discriminatory to the extent that they exceed the rates contemporaneously maintained from Louisville to Lexington or Georgetown.

The complaint also alleges that the rates from interstate points to Shelbyville, through Louisville, are unreasonable in themselves. Little evidence was introduced in support of this contention, most of the evidence being addressed to the relationship between the Shelbyville rates and the rates to the competing points. The defendants have filed voluminous exhibits showing that the class rates from Louisville to Shelbyville are somewhat lower than rates for similar distances on other parts of the Louisville & Nashville Railroad, and on the lines of other southern carriers. It is shown, for example, that the rates from Louisville to Booths and Colesburg, located in Kentucky on the main line of the Louisville & Nashville Railroad, 32 miles and 34 miles, respectively, from Louisville, are on a 29-cent scale, as compared with the 23-cent scale from Louisville to Shelbyville, 31 miles. The Louisville & Nashville Railroad has compiled an exhibit comparing the class rates from Louisville to Shelbyville with the class rates from 43 important distributing points in the southern states to 457 destinations, approximately 31 miles distant. These rates were averaged and compared with the Shelbyville rates,

with the following result, the rates being stated in cents per 100 pounds:

	1	2	3	4	5	6	A	B	C	D	E	F
Between Louisville and Shelbyville.....	23	20	17	15	14	13	13	13	9	5	13	3
From 43 southern distributing points to 457 destinations.....	36	32	28	24	21	17	16	17	13	11	10	8

In *Lebanon Commercial Club v. L. & N. R. R. Co.*, 35 I. C. C., 214-213, commenting upon an exhibit of this character, we said:

We are of the opinion that it is not fair to measure the reasonableness of rates to and from those points by the standard of rates to and from other junction points in the southern states, particularly points in states as far removed as Florida, Georgia, South Carolina, and Louisiana. Further, it does not appear that the circumstances and conditions surrounding those rates are substantially similar to those existing at Lebanon and Springfield.

From the multitude of rates in this country such tables may easily be prepared, and they are ordinarily not of controlling influence.

The defendants further show that the traffic between Louisville and Shelbyville is light, and that, from an operating standpoint, the line from Anchorage to Shelbyville must be considered a branch line. Freight from Louisville to Shelbyville is handled in trains which operate from Louisville through Shelbyville and down the Bloomfield branch, so that the Shelbyville service is essentially a branch-line service. Upon consideration of all the evidence, we are of opinion and find that the rates from Louisville to Shelbyville have not been shown to be unreasonable.

While the complainant is primarily interested in the rates eastbound to Shelbyville, through Louisville, it is also alleged that the rates on classes and commodities westbound from Shelbyville to interstate points through the Louisville gateway are unreasonable, unjustly discriminatory, and in violation of the long-and-short-haul provision of the fourth section. The complainant has introduced practically no evidence as to the unreasonableness in themselves of these rates, and we find that their unreasonableness has not been established. As to the alleged discriminatory character of the rates, the parties have relied principally upon the same evidence as was addressed to the rates in the opposite direction; and we find that the class rates, applicable to interstate traffic, from Shelbyville to Louisville, are unjustly discriminatory to the extent that they exceed the rates contemporaneously maintained to Louisville from Lexington and Georgetown. The water competition at Frankfort appears to be as potent on westbound traffic as on eastbound traffic. We therefore find that the class rates from Shelbyville to

Louisville, applicable to interstate transportation, are not shown to be unjustly discriminatory as compared with the class rates from Frankfort to Louisville.

The complainant shows that in a number of instances articles move on commodity rates between Louisville and Lexington, Georgetown, Frankfort, Midway, and Paris, while higher class rates are applied on the same articles between Louisville and Shelbyville. The commodity rates to Louisville are listed in Appendix A to this report, while the commodity rates from Louisville are listed in Appendix B. The defendants have given no other explanation of the discrimination against Shelbyville, revealed on these tables, than that which has already been detailed in connection with the class rates. We therefore find that the rates from Shelbyville to Louisville listed in Appendix A, as applicable to interstate traffic, are unjustly discriminatory to the extent that they exceed the corresponding rates contemporaneously applied to the same commodities to Louisville from Lexington or Paris. We further find that the rates listed in Appendix B, from Louisville to Shelbyville, as applicable to interstate transportation, are unjustly discriminatory to the extent that they exceed the rates contemporaneously applied to the same commodities from Louisville to Lexington, Midway, or Georgetown. The commodity rates between Louisville and Shelbyville are not shown to be unjustly discriminatory as compared with the rates between Louisville and Frankfort.

The defendants insist that a decision in favor of the complainant will inevitably prejudice the interests of Louisville in its competition with Cincinnati. This contention is predicated on the assumption that the defendants will feel constrained to increase their rates to the competitive junctions and thus withdraw from the traffic. The evidence of record does not justify that assumption. As previously indicated, the Louisville & Nashville Railroad has a line which parallels the Cincinnati, New Orleans & Texas Pacific Railway from Cincinnati to Lexington. Not only does the Louisville & Nashville Railroad meet the rates of the Cincinnati, New Orleans & Texas Pacific Railway at Lexington and Paris, but it observes them, with some exceptions, as maximum rates at intermediate points. There appears to be no reason for not pursuing the same policy as to the rates to and from Louisville.

The Southern Railway in Kentucky extends from Louisville through Shelbyville to Midway, Georgetown, and Lexington. Though this carrier was named as a party defendant, counsel for the complainant stated at the hearing that the complainant desired to confine the issues to the rates of the Louisville & Nashville Railroad. The Southern Railway in Kentucky is interested in this proceeding,

however, for it carries the same rates as the Louisville & Nashville Railroad to these points. The distances to the destinations in question by the lines of both carriers are shown in the following table:

From Louisville to—	Over Louis- ville & Nash- ville R. R.	Over Southern R. R. in Kentucky.
	Miles.	Miles
Shelbyville.....	31	40
Midway.....	80	94
Lexington.....	94	88
Georgetown.....	88	

The Southern Railway in Kentucky maintains that the Commission should not decide the issues here involved without giving due consideration to the fact that the distances to some of the points over its line are greater than the distances over the Louisville & Nashville Railroad, and especially to the fact that the Southern Railway in Kentucky is, and always has been, in poor financial condition. It having been found that the class rates by way of the Louisville & Nashville Railroad from Louisville to Shelbyville are not shown to be unreasonable in themselves, it follows that the same rates are not shown to be excessive by the circuitous route of the Southern Railway in Kentucky. But the complainant having withdrawn its allegation that the rates of the latter carrier are unjustly discriminatory, no finding thereon will be made. As the application of the Southern Railway in Kentucky for authority to continue lower rates to the interior Kentucky junctions than to Shelbyville was not set for hearing in connection with this case, that application will not be considered at this time.

The Louisville & Nashville Railroad's fourth section application seeks authority to continue to charge lower class and commodity rates, applicable to interstate transportation, through Louisville, to Frankfort, Lexington, Georgetown, and Midway, than the rates concurrently applicable on like traffic to Shelbyville and other intermediate points, and to continue to charge lower class and commodity rates, applicable to interstate transportation, from Frankfort, Georgetown, Midway, and Lexington, through Louisville, than the rates concurrently applicable on like traffic from Shelbyville and other intermediate points.

With regard to the complainant's allegation that the rates in question do not conform to the long-and-short-haul provision of the fourth section the defendants deny that any departure from the provisions of the fourth section exists, because all the Louisville & Nashville Railroad's through freight traffic between Louisville and Frankfort and points east of Frankfort is routed through Lagrange

and does not pass through Shelbyville. The Shelby cut-off, constructed in 1896, connects Shelbyville with Christiansburg and forms part of a continuous line from Louisville to the east through Shelbyville, but for through traffic this cut-off, which is 9 miles long, is used almost exclusively by the Chesapeake & Ohio Railway under a contract with the Louisville & Nashville Railroad. This contract is discussed in *Greenbaum Co. v. C. & O. Ry. Co.*, 25 I. C. C., 352. This record shows that when the Chesapeake & Ohio applied to the Louisville & Nashville for access to Louisville over its rails the former found its main line so burdened with traffic as to make it impracticable to give the Chesapeake & Ohio traffic rights over it. For this reason it therefore built the cut-off mentioned; and over that route, which is not used at all by the Louisville & Nashville on through traffic, the Chesapeake & Ohio reaches Louisville. The reason assigned by the Louisville & Nashville Railroad for routing its through traffic through Lagrange rather than through Shelbyville is that the operating conditions are more favorable on the Lagrange route and exhibits filed by the defendants appear to support that contention, though the distance by the Lagrange route is 9 miles greater than by the Shelby cut-off. The tariffs, however, do not restrict traffic to either route and the Shelbyville route is occasionally used in an emergency. The fourth section application will therefore be considered.

The only evidence submitted by the Louisville & Nashville Railroad in support of its fourth section application is the same as that detailed above, namely, that Shelbyville is disadvantageously located, and that there are competitive influences at Frankfort, Midway, Georgetown, Lexington, and Paris which do not exist at Shelbyville. While it is true that the Louisville & Nashville Railroad's rates to and from the interior Kentucky junction points have been influenced by competitive conditions, as we found in *Lebanon Commercial Club v. L. & N. R. R. Co.*, 35 I. C. C., 204, 213, we feel that the distance from Louisville to Shelbyville is so much less than the distances to Georgetown, Midway, Lexington, and Paris that the rates to and from these points should be observed as maximum rates to and from Shelbyville. We find, however, for the reasons given above, that the defendants have justified the maintenance of lower class and commodity rates to and from Frankfort than the rates concurrently in effect to and from Shelbyville and other intermediate points, provided the present rates at Shelbyville and other intermediate points be not exceeded.

Appropriate orders will be entered.

APPENDIX A.

To Louisville, Ky.

[Rates are stated in cents per 100 pounds unless otherwise specified.]

Commodities.		Classifi- cation.	From—			
			Shelby- ville, Ky. (31 miles).	Lexing- ton, Ky. (94 miles).	Frank- fort, Ky. (65 miles).	Park, Ky. (113 miles).
Ale, beer, porter, and ginger ale.....	CL	E	13	10	.....	.....
Barrels, half barrels, and kegs.....	CL	5	14	10	11	.....
Same.....	LCL	3	17	.....	13	.....
Beans, dried.....	CL	5	14	8	.....	.....
Canned fish, fruits, and vegetables.....	CL	5	14	8	8	.....
Coal, per ton of 2,000 pounds.....	CL	6	260	85	.....	.....
Coke, per ton of 2,000 pounds.....	CL	6	260	85	.....	.....
Hemp fiber and hemp tow.....	CL	4	15	.....	13	.....
Ice, when in box cars, per ton of 2,000 pounds.....	CL	N	100	75	.....	.....
Ice, when in refrigerator cars, per ton of 2,000 pounds.....	CL	{ 110% of N }	110	82.5	.....	.....
Iron and steel articles, viz:						
Special iron.....	CL	I	13	8	.....	.....
Same.....	LCL	I	13	10	.....	.....
Railway track material per ton of 2,240 pounds.....	CL	.....	2.912	80	.....	.....
Molasses and sirup.....	CL	5	14	10	.....	.....
Packages, beer, empty returned, any quantity.....			64	5	5.5	.....
Pickles and vinegar, straight or mixed.....	CL	6	13	8	.....	.....
Poultry, dressed, any quantity.....		12	20	.....	.....	17
Seed, viz, grass and clover.....	CL	6	13	.....	11	10
Starch.....	CL	6	13	8	.....	.....
Straw.....	CL	D	8	7	8	.....
Whisky in wood.....	CL	H	13	10	10	.....
Whisky in glass.....		2	20	.....	13	.....
Bar, tes.....	CL	N	5	.....	4	.....
Brooms.....	CL	2	20	.....	13	.....
Chairs, set up.....	LCL	14	34.5	.....	20	.....
Chair stock.....	CL	5	14	.....	8	.....
Wood, sh's.....	CL	N	5	.....	4	.....
Rags and paper stock.....	CL	A	13	.....	10	.....
Tomato pulp.....	CL	5	14	.....	8	.....
Twine, any quantity.....		13	17	.....	9	.....
Whiting, ground lime-stone, spar calc, or common.....	CL	6	13	.....	4	.....

¹ Fourth class in carloads, 15 cents.

² Fifth class in carloads, 14 cents.

APPENDIX B.

From Louisville, Ky.

[Rates are stated in cents per 100 pounds unless otherwise specified.]

Commodities.		Classi- fication.	To—				
			Shelby ville, Ky. (31 miles).	Lex- ington, Ky. (94 miles).	Frank- fort, Ky. (68 miles).	George- town, Ky. (88 miles).	Mad- ison, Ky. (94 miles).
Agricultural stone, ground, per ton 2,000 pounds.....	CL		100	90			
Ale, beer, porter, and ginger ale.....	CL	E	13	10			
Barrels, half barrels, and kegs, tight cooperage.	CL	5	14	10	11		
Same.....	LCL	3	17	15	13		
Beans, dried, in barrels, boxes, or bags.....	CL	5	14	8			
Boxes, empty, minimum weight 15,000 pounds.	CL	5	14		10		
Boxes, wooden, not nested, in packages or loose, minimum weight 12,000 pounds.....	CL	4	15		13		
Same.....	LCL	1	21		20		
Broom corn and handles, straight or mixed....	CL	5	14		7		
Calcium chloride.....	CL		5	7	8		
Cane, cane splints, and chair bottom material..	CL	3	17		13		
Carriers, bottle, s. u., in packages or loose, minimum weight 15,000 pounds.....	CL	5	14		12		
Same.....	LCL	2	20		17		
Carriers, bottle, k. d., flat or folded flat, mini- mum weight 30,000 pounds.....	CL	6	13		10		
Same.....	LCL	3	17		15		
Chair stock.....	CL	5	14		8		
Cullet.....	CL	4A	6.5		6		
Fruits, viz: oranges, lemons, limes, and grape- fruit, straight or mixed.....	CL	2	20	15			
Grapes, peaches, and plums, straight.....	CL	2	20	15			
Glassware, viz: Bottles rated first class in southern classi- fication.....	LCL	1	23		20		
Bottles rated second class in southern classification.....	LCL	2	20		17		
Bottles rated third class in southern classi- fication.....	LCL	3	17		15		
Bottles rated fourth class in southern clas- sification.....	CL	4	15		13		
Bottles rated fifth class in southern classi- fication.....	CL	5	14		12		
Grain, all kinds, including malt.....	CL	D	9		6		
Ice, when in box cars, per ton 2,000 pounds..	CL	N	100	75			
Ice, when in refrigerator cars, per ton 2,000 pounds.....	CL	{ 11% of N }	100	82.5			
Iron and steel articles, viz: Special iron.....	CL	I	13	8			
Same.....	LCL	I	13	10			
Railway track material, per ton 2,200 pounds..	CL	I	2.91	5			
Laths and sheathing combined.....	CL		9	10	10		
Leather.....	CL	4	15		10		
Meats, fresh.....	CL	4	15		11		
Packages, beer, empty, any quantities.....			6.5	8	5.5		
Pies, fruit, nut, and other, and vinegar, in mixed barrels, with pickles, preserves, or jams and jellies.....	CL	5	14	13			
Pieces and blocks in wood.....	CL	6	13	8			
Silos, wooden.....	CL	L	9			9	
Soda ash.....	CL	6	13		6.5		
Starch.....	CL	6	13	8			
Tobacco, unmanufactured, in barrels, any quantity.....		6	13			8	13
Iron roofing and sheet iron.....	CL	6	13			9	

No. 6105.
TRAFFIC BUREAU OF KNOXVILLE, TENN.,
v.
CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY
COMPANY ET AL.

INVESTIGATION AND SUSPENSION DOCKET No. 345.
CLASS AND COMMODITY RATES FROM KNOXVILLE, TENN.

Submitted March 12, 1915. Decided December 24, 1915.

Present joint rates on classes and commodities from Knoxville, Tenn., to certain stations on the Cincinnati, New Orleans & Texas Pacific Railway in the state of Kentucky found unreasonable to the extent that they exceed the rates contemporaneously maintained from Chattanooga, Tenn., to the same destinations.

Charles Kimmich for Traffic Bureau of Knoxville, Tenn.

Alex. M. Bull for Southern Railway Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

The proceeding here before us involves the joint rates in effect on classes and commodities from Knoxville, in the state of Tennessee, to stations on the line of the Cincinnati, New Orleans & Texas Pacific Railway in the state of Kentucky. It is alleged that the rates are unjust and unreasonable, in violation of section 1 of the act to regulate commerce, and unjustly discriminatory, in violation of section 3, in that they subject the merchants of Knoxville to undue prejudice and disadvantage to the preference of competitors located at Cincinnati, Chattanooga, Louisville, and Lexington. The relief sought is an order requiring the defendants to put in force and maintain rates from Knoxville to the destinations in question which shall not exceed the rates in effect over the Cincinnati, New Orleans & Texas Pacific Railway from Cincinnati for similar distances.

Prior to June, 1913, specific through rates were not published from Knoxville to points north of the Kentucky-Tennessee state line: those rates were provided for, in a separate tariff issued by the Southern Railway, on the basis of the proportional rates to Harriman Junction plus the full tariff rates beyond. In that month through rates were established to stations in Kentucky as far north as Brannon, 222 miles from Knoxville and 86 miles from Cincinnati;

this action was taken upon the theory that the jobbers of Knoxville were not interested in rates beyond that point. It is said that in the construction of those through rates the rates from Chattanooga to the same destinations were to have been observed as the minimum rates, but through error a few of the rates from Knoxville were published upon the basis of the former combination and made less than the Chattanooga rates. This alleged error was subsequently corrected by advancing such of the rates from Knoxville as were lower than the rates from Chattanooga. As that action increased rates which were already the subject of complaint, a protest was made by the complainant herein, and the increased rates were suspended. The higher rates from Knoxville became operative December 29, 1914, through the lapse of the statutory period of suspension, but effective March 6, 1915, they were reduced to the former level. The increased rates, therefore, need not be considered in this report, although the testimony at the hearing was directed to those rates as well as to the rates in effect at the time the complaint was filed.

The gravamen of this complaint is that the shippers and jobbers in Knoxville are restricted in their territory of trade at stations upon the Cincinnati, New Orleans & Texas Pacific in Kentucky by reason of the more favorable rates accorded to their competitors in Cincinnati and Louisville, and to some slight extent in Lexington. For example, one witness testified that he was unable to reach the territory north of the Kentucky-Tennessee state line, 111 miles from Knoxville and approximately 200 miles from Cincinnati, because of the present adjustment of rates. Other merchants testified that, although they extended their operations to points midway between Cincinnati and Knoxville, they were able to do so only by equalizing the Cincinnati rates. Competition at the markets in Kentucky is keen, and the testimony tended to show that the Knoxville jobbers are suffering a gradual loss of trade on account of the activities of other cities having more favorable rates, both inbound and outbound.

Traffic from Knoxville to stations on the Cincinnati, New Orleans & Texas Pacific Railway in the territory named moves for a distance of 52 miles over the rails of the Southern Railway to Harriman Junction, in the state of Tennessee. The through rates are constructed upon the former basis of proportional rates to Harriman Junction plus the local rates beyond, the proportional rates being much lower than the local rates of the Southern Railway to the junction point. This is illustrated by the following comparison of proportional and local rates from Knoxville to Harriman Junction:

Class.....	1	2	3	4	5	6	A	B	C	D	E	H	F
Proportional.....	20	18	16	12	10	10	8	9	8	8	12	12	16
Local.....	34	30	26	22	20	15	13	17	12	12	20	20	24

87 L C Q

Rates applying between stations on the Cincinnati, New Orleans & Texas Pacific Railway are in accordance with the mileage scales adopted by that road. For example, rates from Chattanooga and other stations in Tennessee are made upon the Tennessee scale, which is also applicable on shipments from points in Tennessee to points in Kentucky. Rates from Cincinnati and Lexington are based upon the Kentucky scale, which is lower than the Tennessee scale. This fact can be best shown by a comparison of the two scales for the same distances.

	Miles.	Class.
Kentucky	35	15
Tennessee	40	20
Kentucky	45	25
Tennessee	50	30
Kentucky	55	35
Tennessee	60	40
Kentucky	65	45
Tennessee	70	50
Kentucky	75	55
Tennessee	80	60
Kentucky	85	65
Tennessee	90	70
Kentucky	95	75
Tennessee	100	80
Kentucky	105	85
Tennessee	110	90
Kentucky	115	95
Tennessee	120	100
Kentucky	125	105
Tennessee	130	110
Kentucky	135	115
Tennessee	140	120
Kentucky	145	125
Tennessee	150	130
Kentucky	155	135
Tennessee	160	140
Kentucky	165	145
Tennessee	170	150
Kentucky	175	155
Tennessee	180	160
Kentucky	185	165
Tennessee	190	170
Kentucky	195	175
Tennessee	200	180

It becomes plainly evident from the above comparison that under a given rate a shipment of merchandise will move southbound from Cincinnati a materially greater distance than northbound from Knoxville. An approximate equalization in the rates takes place at Siler-ville, just north of the Kentucky-Tennessee state line, although the distance of that point from Cincinnati exceeds its distance from Knoxville by 85 miles. This difference in the rate adjustment, which the complainant contends is unduly discriminatory, is justified by the defendants principally upon two grounds: First, that the rates from Cincinnati and Louisville were inherited by the present operating com-panies and were established many years ago to meet special conditions existing in central Kentucky; and, second, that transportation from Knoxville involves a two-line haul, whereas from Cincinnati it is en-tirely over the main line of the Cincinnati, New Orleans & Texas Pacific Railway.

The reason for the present adjustment of rates from Louisville and Cincinnati to points in Kentucky was recently explained at length in *Lebanon Commercial Club v. L. & N. R. R. Co.*, 35 I. C. C., 204-209. The same explanation was advanced in briefer form in this case. It appears that in the early history of the railroads in Kentucky there were three distinct railroad systems in operation-- the Kentucky Central extending southward from Covington; the Louisville, Cincin-

nati & Lexington, extending from Cincinnati to Louisville, with branches to Lexington and other points; and the Louisville & Nashville, extending from Louisville across the state of Kentucky to Rowland. At that time Cincinnati was unable to reach southern territory except through Louisville. This placed the merchants of the former city under a disadvantage and resulted in the construction of the Cincinnati Southern, now operated by the Cincinnati, New Orleans & Texas Pacific. This line, built in the interests of the Cincinnati merchants, put in effect a low plane of rates from Cincinnati to all stations upon its rails, thereby compelling the parallel Kentucky Central Railroad to establish correspondingly low rates. In the year 1858 the Louisville Southern Railroad, now in the Southern Railway system, was opened for traffic from Louisville to a junction with the Cincinnati Southern at Burgin, and was forced to meet the plane of rates in effect over the other lines extending through the common territory in central Kentucky. A working agreement was then entered into between the officials of the Louisville Southern and the Cincinnati Southern which provided that the rates from Louisville to Cincinnati Southern stations south of High Bridge should be the same as from Cincinnati, and to stations north of and including High Bridge the same as from Cincinnati to High Bridge. In return for this privilege of reaching the Cincinnati Southern stations, the Cincinnati Southern was permitted to publish rates from Cincinnati to Louisville Southern stations at less than the full combination. In other words, there was a reciprocal arrangement between the two carriers by which the merchants of Louisville and Cincinnati were to reach this common territory upon substantially the same terms.

Those independent railroads, which originally established the rates in Kentucky, are now operated by other lines, and the adjustment prevailing in the early days has been continued to the present time.

This brief review of the history of this rate adjustment demonstrates that there were, and are, conditions existing in Kentucky having a marked influence upon the rates from Louisville and Cincinnati. One of those conditions to-day is the ever-present possibility of cross-country competition between the Kentucky Central division of the Louisville & Nashville and the Cincinnati, New Orleans & Texas Pacific. A substantial increase in the rates on one road would divert the traffic over the country roads to the other line, and this fact has undoubtedly been a deterrent toward any change in the long-established adjustment.

A mere comparison of two dissimilar rates for equal distances, even in the same general territory, does not always suffice to prove the one unreasonable or discriminatory, as the conditions and circumstances which surround the one may be entirely absent from the other.

In this instance the conditions which we have mentioned do not affect traffic from Knoxville; there have been no such influences bearing down the rates, and, as a consequence, a very different scale applies. A comparison of the rates applying north from Knoxville with those applying south from Cincinnati does not show the Knoxville rates to be unreasonable, as the competition which was the controlling factor in fixing and maintaining the Cincinnati rates does not exist on traffic originating at Knoxville. Nor does the comparison relied upon by the complainant establish proof of discrimination. The Southern Railway, upon whose rails the city of Knoxville is located, does not make the rates from Cincinnati, nor does it participate in the traffic from that point to the destinations herein involved. Although that in itself might not constitute a sufficient defense against the alleged discrimination, inasmuch as discrimination may sometimes be effected as well by a joint rate as by a one-line rate, yet when we consider that the adjustment of rates in central Kentucky is the result of competitive conditions which neither of the parties defendant herein is able to control, *Lebanon Commercial Club v. L. & N. R. R. Co.*, 35 I. C. C., 204, 213, it would appear that the contention of the complainant in this respect is unfounded.

It is argued that the interest of the Southern Railway in the Cincinnati, New Orleans & Texas Pacific is such as to make of the two companies but one single system. We have already disposed of this argument, however, in *Receivers & Shippers Asso. v. C., N. O. & T. P. Ry. Co.*, 18 I. C. C., 440, wherein we said, at page 457:

In the so-called *Commodities case* recently decided by the Supreme Court of the United States, *U. S. ex rel. The Attorney-General v. Delaware & Hudson Co.*, 213 U. S., 366, it was held that a railroad company owning a majority of the capital stock of a coal company and really controlling through that stock the operations of the coal company had no interest, direct or indirect, in the coal mined by the coal company. It is certainly doubtful whether in view of this decision it can be affirmed that there is such a connection between the Southern Railway and the Cincinnati, New Orleans & Texas Pacific that these two companies can be held responsible under the third section of the rates of one another. It seems probable that we must under this construction of the law dispose of this case as though these two companies were distinct in fact as well as in name and in operation, and if this is so the case stands before us to-day as it did in 1894.

It is, however, true that the Cincinnati, New Orleans & Texas Pacific is operated in harmony with the Southern Railway; that its rates and its policies are dictated by that company, and that the Southern Railway has practically the same authority to reduce this rate from Cincinnati to Chattanooga at present as it would have if it operated the line under its own name. This Commission has been inclined to look to the substance rather than the form in a case like this, *Eichenberg v. Southern Pacific Co.*, 14 I. C. C. Rep., 250. But here we doubt whether, if the Southern Railway itself operated this line from Cincinnati to Chattanooga, we ought to hold it responsible for this reduction of rates. The Southern Railway is but a single carrier among all those serv-

ing this territory. It can not, whatever effort it may make, control that situation. It must bow to the competitive conditions which exist.

In the proceeding referred to above we had under consideration the class rates from Cincinnati to Chattanooga, a distance of 336 miles. Those rates were then on a 76-cent scale, which we held to be unreasonable to the extent that they exceeded a 70-cent rate.

The distance from Knoxville to stations on the Cincinnati, New Orleans & Texas Pacific in Kentucky is 28 miles less than from Chattanooga, but the rates from Chattanooga, based on the Tennessee interstate scale, are frequently lower. In other words, the Knoxville rates are materially higher than the Tennessee scale for the same distances, and are greater to many points than the rates from Chattanooga, 28 miles farther distant. The following table shows the rates from Knoxville compared with the Tennessee interstate scale and the rates from Chattanooga to the same destinations:

	Miles.	Class.
To Greenville from Knoxville.....	111	
Tennessee scale.....	111	
Chattanooga.....	139	
To Greenwood from Knoxville.....	131	
Tennessee scale.....	131	
Chattanooga.....	159	
To Somerset from Knoxville.....	149	
Tennessee scale.....	149	
Chattanooga.....	177	
To King Mountain from Knoxville....	171	
Tennessee scale.....	171	
Chattanooga.....	200	
To High Bridge from Knoxville.....	207	
Tennessee scale.....	207	
Chattanooga.....	235	

The defendants contend that the rates from Knoxville are abnormally low because they are made on less than the full combination and because they are but slightly higher for the two-line haul than the mileage scale applying for a one-line haul over the Cincinnati, New Orleans & Texas Pacific. It is true that the full combination over Harriman Junction exceeds the present combination of proportional and local rates, but there is nothing unusual in that method of making joint rates, and the fact that there are joint through rates elsewhere made on the full combination has no bearing. The excess of the Knoxville rates over the mileage scale varies for the different destinations, the maximum for the numbered classes being 10 cents on first class.

In view of all the facts and circumstances of record, we are of the opinion that the conditions do not justify such a reduction in the rates from Knoxville as the complainant here seeks to bring about. The scale of rates applying in Kentucky, which has been in existence for

many years, is the result of strongly competitive influences, as we have stated. It may not, therefore, be made the basis for a comparison with rates established under substantially dissimilar conditions. Under all the circumstances we are inclined to the view that the comparison of the rates from Knoxville with those from Chattanooga forms the proper guide as to the reasonableness of the rates from the former city. Knoxville is 28 miles nearer the destinations involved, but the fact that the transportation is over what must be considered technically as two lines does not afford a sufficient reason for maintaining rates therefrom exceeding those in effect over the greater distances from Chattanooga.

Upon a full consideration of this matter we are of the opinion that the rates from Knoxville are unreasonable to the extent that they exceed the rates contemporaneously maintained from Chattanooga to the same destinations. Our order herein will require the defendants to establish rates from Knoxville to stations on the Cincinnati, New Orleans & Texas Pacific Railway between the Kentucky-Tennessee state line and Brannon, Ky., which shall not exceed those now in force from Chattanooga to the same destinations; it will also require the defendants for the future to maintain from Knoxville rates no higher than they contemporaneously maintain from Chattanooga to the destinations in question. We are not advised as to the necessity for extending the joint rates to destinations north of Brannon, to which no through rates are at present in effect, and no order will be issued covering those points.

Orders will be issued in conformity with the findings herein.

INVESTIGATION AND SUSPENSION DOCKET No. 650. CEMENT TO LONG ISLAND POINTS.

Submitted November 3, 1915. Decided January 20, 1916.

Proposed increased commodity rates on cement in carloads from points in Pennsylvania and New Jersey to destinations on the Long Island Railroad found justified.

Douglas Swift for Delaware, Lackawanna & Western Railroad Company.

A. W. Rinke for Central Railroad Company of New Jersey and Lehigh Valley Railroad Company.

R. D. Jenks and *W. A. Glasgow, jr.*, for Whitehall Cement Manufacturing Company, protestant.

REPORT OF THE COMMISSION.

HALL, Commissioner:

By schedules filed to become effective June 1, 1915, respondents proposed increased commodity rates on cement in carloads from points in what are known as the Lehigh and Nazareth districts of Pennsylvania, and from certain points in New Jersey, to destinations on the Long Island Railroad. Upon protest by the Whitehall Cement Manufacturing Company, which operates a cement mill at Cementon, Pa., in the Lehigh district, the operation of the schedules was suspended until March 29, 1916.

The Lehigh district is served by the Central Railroad of New Jersey and the Lehigh Valley Railroad, and the Nazareth district by the Delaware, Lackawanna & Western Railroad. All three carriers serve the New Jersey district.

The territory of destination is, for rate making, generally divided into five groups, the first embracing merely Long Island City, Blissville, and Nichols Siding, and the other four being designated groups A, B, C, and D, respectively. The following table shows rates on shipments of cement in carloads from the three groups, or districts, of origin to the five groups of destination:

Rates per ton of 2,000 pounds from Lehigh, Nazareth, and New Jersey districts.

To	Prior to Feb. 1, 1915, in effect	Effective Feb. 1, 1915.	Present, Proposed	
Long Island City, Blissville, Nichols Siding	\$1.75	\$1.60	\$1.08	\$1.35
Group A	1.90	1.95	1.98	2.00
Group B	2.10	2.00	2.05	2.10
Group C	2.20	2.20	2.25	2.30
Group D	2.30	2.30	2.35	2.40

Effective March 1, 1916, as proposed by them in the First Pet. Com. Case, 33 I. C. C., 228.

It will be observed that the proposed rates are substantially those in effect prior to February 1, 1915, plus 5 per cent.

There appears to be market competition at these destinations between the three districts named and the so-called Hudson River district which embraces Hudson, Hudson Upper, Alsen, and Whiteport, N. Y., points on or near the Hudson River, and served by the New York Central and West Shore under water competition. Ninety per cent of the cement shipped from the Hudson River mills to Long Island Railroad stations moves by water to Long Island City.

There is competition also between the carriers serving the three districts and those serving the Hudson River district. The record shows that this competition is keen. All the carriers have attempted to maintain parity of rates to Long Island Railroad destinations, and the reductions effective February 1, 1915, were made to meet corresponding reductions by the rail lines on both banks of the Hudson River.

Effective June 1, 1915, these lines increased their rates, but when the corresponding rates of the respondents were suspended in this proceeding they promptly restored them to avoid maintenance of higher rates than those in effect from the Pennsylvania and New Jersey mills.

The following table, based upon an exhibit of record, shows the proposed rates on cement and the present rates on slate, lime, ground limestone, and "high-class common brick," said to be commodities fairly comparable with cement, from actual shipping points in the same territory of origin to stations on the Long Island Railroad:

Carload rates per ton of 2,000 pounds.

Commodities.	Long Island City.	Group A.	Group B.	Group C.	Group D.	Average mileage.
Cement, minimum weight 50,000 pounds, proposed	\$1.78	\$2.00	\$2.20	\$2.40	\$2.80	116
Slate from Bangor, Pa., minimum weight 40,000 pounds	2.42	2.42	2.82	3.02	3.42	118
Lime from Portland, Pa., minimum weight 36,000 pounds:						
Effective prior to Oct. 25, 1915	2.10	2.32	2.52	2.72	3.12	110
Effective Oct. 25, 1915	1.90	1.90	2.30	2.50	2.90	
Ground limestone from New Village, N. J., minimum weight 50,000 pounds	1.68	1.90	2.10	2.30	2.70	101
Brick from Nazareth, Pa., minimum weight 50,000 pounds	1.74	1.96	2.16	2.36	2.76	135

It was testified that slate is about three times as valuable as cement and is not easily damaged; that the value of lime at the kiln is approximately one-half that of cement; that the witness never knew of a claim for loss or damage on lime, while such claims on shipments of cement are more or less frequent; that the value of ground

limestone, which is shipped in bulk in box cars, is about one-third that of cement; that it is used generally for fertilizer and has been accorded a low rate because the railroads expect to receive additional revenue for hauling the products of the soil which it is intended to enrich; and that the brick in question is of about the same value as cement, but is shipped in open cars and is not subject to claims for loss or damage to any appreciable extent. It was further testified that the four commodities selected for comparison move freely under the present rates and that, so far as the witness was aware, there has never been any protest against such rates.

The transportation service performed includes four terminal services and lighterage service.

Protestant's principal reason for opposing the proposed increase is that it has outstanding contracts based on the present rates for Long Island Railroad deliveries up to March and April, 1916. It contends that the proposed rates are unreasonably high because not constructed upon the same basis as class rates. That basis extends the New York rate to all points on New York harbor within lighterage limits, including Long Island City, with arbitraries higher to more distant points on Long Island. The cement rate to New York is \$1.44, against \$1.66, present, and \$1.78, proposed, to Long Island City. Respondents reply that the rates are not in conflict with their uniform rule as to classes and most commodities, which is to apply the New York harbor rates to Long Island City and group A points, subject to a minimum of the sixth-class rate of 9½ cents per 100 pounds, equal to \$1.90 per ton. The cement rates do not reach this minimum and equal the aggregate of the proportion accruing to the lines performing the transportation to the Long Island Railroad float bridge plus the arbitraries charged by that carrier. The record suggests no fundamental error or injustice in the general rate plan, and it seems unnecessary in this proceeding to discuss it further.

Upon the facts disclosed we are of opinion and find that respondents have justified the proposed increased rates. The order of suspension will be vacated.

87 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 624.

CEMENT TO OHIO POINTS.

Submitted August 26, 1915. Decided January 21, 1916.

Proposed cancellation of tariff item showing rates on cement in carloads from various points to Fayette, Fayette county, Ohio, delivering line Toledo & Western, found to be justified. Order of suspension vacated.

A. P. Burgwin for Pennsylvania Company.

F. E. Paulson and *W. F. Clark* for protestant.

REPORT OF THE COMMISSION.

DANIELS, Commissioner:

To become effective April 15, 1915, the Pennsylvania Company published supplement No. 2 to its tariff I. C. C. No. F-625, containing local, joint, and proportional rates on cement in carloads from stations on its line, including New Castle, Pa., to points in various states, including Ohio. One of the items in this supplement proposed to cancel rates to Fayette, Fayette county, Ohio, T. & W., the initials T. & W. indicating the Toledo & Western Railroad as the delivering line. Protest was filed by the Lehigh Portland Cement Company, of Allentown, Pa., protestant representing that the item referred to, if permitted to become operative, would have the effect of canceling the existing joint through rates on cement in carloads from New Castle, Pa., and various other producing points to stations on the Toledo & Western Railroad. The Commission suspended the item until August 13, 1915, and later until February 13, 1916.

At the hearing the witness for the respondent explained the proposed cancellation as follows: Effective June 15, 1910, respondent published a tariff, I. C. C. No. F-254, naming, among other provisions, rates on cement in carloads from New Castle, Pa., to Fayette, Fulton county, Ohio, and also to Fayette, Fayette county, Ohio.

Fayette, Fulton county, Ohio, is in the extreme northwestern part of the state, about 50 miles west of Toledo, and is reached by the Lake Shore & Michigan Southern and the Toledo & Western, the latter an electric line. The station known as Fayette, Fayette county, Ohio, was on the Detroit, Toledo & Ironton in the southern part of the state, and about the time of the publication of that tariff was discontinued as a station. Tariff I. C. C. No. F-254 was super-

sed by tariff I. C. C. No. F-386, effective July 15, 1912. This tariff named rates to Fayette, Fulton county, Ohio, delivering line L. S. & M. S., also to Fayette, Fayette county, Ohio, delivering line T. & W. The carrier explains that the inclusion of the latter item was a clerical error, as Fayette, Fayette county, Ohio, did not then exist as a railroad station, and was not on the Toledo & Western. The same item, however, was erroneously carried forward and appears in tariff I. C. C. No. F-625, effective January 15, 1915, which superseded tariff No. F-386. The error was subsequently discovered and correction was attempted in the supplement containing the item under suspension.

Respondent claims that it has never had joint rates with the Toledo & Western. It has, however, handled shipments delivered by the Toledo & Western at Fayette, Fulton county, but such shipments have been rebilled at local rates.

The traffic manager for the Lehigh Portland Cement Company, representing the protestant, claimed that he had no knowledge of the former existence of Fayette, Fayette county, as a station, and assumed that, in publishing rates to Fayette, Fayette county, with the Toledo & Western shown as the delivering line, the carrier had reference to Fayette, Fulton county.

The Commission finds that the proposed cancellation is proper. The order of suspension will accordingly be vacated.

37 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 584.
SALT TO OKLAHOMA.

Submitted May 11, 1915. Decided January 11, 1916.

At the present time the rates on salt in carloads from producing points in the Michigan and Ohio salt fields to certain destinations in Oklahoma are respectively $2\frac{1}{2}$ and $3\frac{1}{2}$ cents per 100 pounds in excess of the rates from Chicago. The tariff item suspended proposed to effect an increase of 2.04 cents in these differentials. *Held*, That rates from the Michigan field to the destinations here involved should not exceed the rates from Chicago by more than $2\frac{1}{2}$ cents and that the rates from the Ohio producing points should not exceed those from Chicago by more than $3\frac{1}{2}$ cents.

F. A. Leland, W. T. Hughes, and F. G. Wright for respondents.
W. J. Tomkins for protestants.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The rates on classes and commodities from stations in Michigan, Ohio, and other points in central freight association territory to stations in Oklahoma, with but few exceptions, are made by adding established arbitraries or differentials to the St. Louis rates as basing rates. For some time prior to May 12, 1910, the differential on salt in carloads from Michigan producing points to destinations in Oklahoma, Arkansas, Louisiana, and Texas was $7\frac{1}{2}$ cents and from Ohio points $8\frac{1}{2}$ cents per 100 pounds in excess of the St. Louis rates. On that date, however, these differentials, in so far as they affected traffic to stations in Oklahoma, were eliminated from the tariff and differentials or arbitraries of $2\frac{1}{2}$ cents and $3\frac{1}{2}$ cents were published to be added to the rates from Chicago in order to make the through charges on salt from Michigan and Ohio points, respectively, to stations in Oklahoma. These arbitraries, as should be noted, were not made applicable on shipments to points in the other three states just named. As the rates from Chicago to Oklahoma destinations were but $3\frac{1}{2}$ cents higher than the rates from St. Louis, the publication of the Chicago differentials of $2\frac{1}{2}$ cents and $3\frac{1}{2}$ cents resulted in a reduction of the through charges by $1\frac{1}{2}$ cents. Whereas the rates from the Michigan and Ohio fields were formerly $7\frac{1}{2}$ cents and $8\frac{1}{2}$ cents, respectively, in excess of the rates from St. Louis, under the new tariffs the rates from these fields through Chicago became but $5\frac{1}{2}$ cents and $6\frac{1}{2}$ cents, respectively, in excess of the St. Louis rates.

Taking the rate from Detroit to Oklahoma City as typical of the general adjustment, it thus appears that prior to May 12, 1914, the through charge was 33 cents, or $7\frac{1}{2}$ cents in excess of the rate of 25 cents from St. Louis; and that after that date, the Chicago arbitrage having been made available, the through charge between the points became 31 cents, made up of the 2-cent differential to Chicago and the 29-cent rate beyond. The differentials to St. Louis, however, were republished in a tariff which became effective on August 16, 1914, since which time there have been in effect two bases for making rates from the Michigan and Ohio salt fields to the Oklahoma destinations here under consideration. The lower adjustment through Chicago controlled, however, and the differentials of $7\frac{1}{2}$ cents and $8\frac{1}{2}$ cents in excess of the St. Louis rates were not used. Under *The Five Per Cent Case*, 31 I. C. C., 351, the St. Louis differential from Detroit on traffic destined to Arkansas, Oklahoma, and Texas was later increased from $7\frac{1}{2}$ cents to 7.7 cents; but because of an unexpired order in an unreported case the St. Louis differential of 7 cents to stations in Louisiana has not yet been changed.

By a tariff filed to take effect on February 8, 1915, the carriers, without any protest by shipper, increased their through rates to Oklahoma destinations, both from St. Louis and Chicago, by $1\frac{1}{2}$ cents per 100 pounds; but this increase did not affect the relationship in the rate from those cities. By another item, however, in the same tariff the carriers proposed to cancel the specific Chicago differentials of 2 and $3\frac{1}{2}$ cents on Oklahoma traffic from the Michigan and Ohio fields, leaving available only the St. Louis differentials of 7.7 and 8.7 cents. The effect of the cancellation proposed would result in increasing the rate available from those producing points by 2.04 cents. The new rate to Oklahoma City, for example, from Chicago is 30.5 cents, while the rate proposed from Detroit is 31.54 cents, or 1.04 cents higher than the Chicago rate. But the item by which this increase was to be accomplished was suspended and is here the subject of our inquiry.

The history of the rate structure on this salt traffic from the Michigan and Ohio fields to destinations in the States of Iowa, Minnesota and in western Nebraska territory is stated in *Colonial Salt Co. v. M., I. & N. R. Co.*, 23 I. C. C., 358, and *Colonial Salt Co. v. C., B. & Q. R. R. Co.*, 31 I. C. C., 539. In the latter case we found the rates then in effect on salt in carloads to points in the territory just mentioned were discriminatory against the Michigan and Ohio fields when in excess of $2\frac{1}{2}$ cents and $3\frac{1}{2}$ cents respectively over the rates to the same destinations from Chicago and Chicago common points. Among other destinations, the order in the former covered a few points in eastern Oklahoma, none of which are affected by the changes under investigation in this case. To the destinations in Oklahoma here involved, however, the rate from Detroit at we have seen, is at the present time but $2\frac{1}{2}$

cents higher than the rates from Chicago. With a specific differential of 7.7 cents applicable from Detroit on shipments of salt to stations in Arkansas and Texas, with a like differential published from Detroit to St. Louis on Oklahoma traffic, and with a differential of $7\frac{1}{2}$ cents applicable from Detroit to St. Louis on salt to Louisiana destinations, it will be seen that the adjustment now available on salt from Michigan and Ohio to Oklahoma, based on Chicago, and but $5\frac{1}{2}$ cents in excess of the St. Louis rates, is an exception to the general differential adjustment in effect to southwestern territory. The respondents contend that there is no reason, commercial or otherwise, why this exception should continue, and state that the differential applicable from producing points in those two states to Oklahoma should really be greater than and not less than the differential applicable to Texas. At the present time the differentials applicable to Oklahoma and Texas traffic are generally the same. As a matter of fact, it is stated on behalf of the carriers that in the tariff above referred to, filed to become effective on August 16, 1914, it was intended to cancel out this differential of $2\frac{1}{2}$ cents from Detroit to Chicago, and to republish as applicable on Oklahoma traffic only the differential of $7\frac{1}{2}$ cents from Detroit to St. Louis, thus putting Oklahoma traffic on the same basis as traffic to Arkansas, Louisiana, and Texas. Through a clerical error, however, this result was not accomplished.

We have said that by the suspended item the through rate now available from Detroit to Oklahoma destinations would be increased by 2.04 cents. As heretofore explained, a portion of this increase followed our decision in *The Five Per Cent Case, supra*, and as to the remainder, approximately $1\frac{1}{2}$ cents, the respondents assert that they are merely restoring the voluntary reductions of this amount made by them in May, 1910. In other words, they contend that they are here but conforming to the action of the western trunk lines, which, following the decision in *Colonial Salt Co. v. M., I. & I. Line, supra*, reduced their rates to points in that territory, and later increased them in the same amount after the decision in *Colonial Salt Co. v. C., B. & Q. R. R. Co., supra*. On the record the carriers made no attempt to justify rates from Michigan or Ohio points that exceeded those from Chicago by 4.4 cents and 5.4 cents per 100 pounds, respectively, or in fact by any amounts in excess of those fixed in the latter case, namely, $2\frac{1}{2}$ and $3\frac{1}{2}$ cents. It was indeed admitted that the tariff item now under investigation was really violative of the spirit of our order in that case. At the hearing the carriers announced their intention of publishing a new tariff which would establish to these Oklahoma destinations rates from Detroit not in excess of those from Chicago by more than $2\frac{1}{2}$ cents per 100 pounds. This proposal on their part is satisfactory to the representative of the

protestants, who stated that his clients are not interested primarily in the level of the rates but in the relationship that the rates from the Michigan and Ohio fields shall bear to the rates from Chicago; they do not object to the St. Louis differentials of 7.7 cents and 8.7 cents so long as the rates from the Michigan and Ohio fields do not exceed those from Chicago by more than $2\frac{1}{2}$ cents and $3\frac{1}{2}$ cents per 100 pounds, respectively. While this attitude of the parties as expressed at the hearing makes it unnecessary in this proceeding for us to consider the reasonableness of the differentials of 7.7 cents and 8.7 cents from the Michigan and Ohio fields, respectively, to St. Louis, no reasons are shown upon this record why the differential adjustment to the stations in Oklahoma here involved should differ from that in effect to other stations in the same state and in the states of Louisiana, Arkansas, and Texas. But it appears from the tariff filed to become effective on July 28, 1915, that the carriers have republished the same differential adjustment as was required to be maintained by our order of suspension in this proceeding. At that time, therefore, the through rates from these salt-producing points to the Oklahoma destinations here involved are in conformity with our finding in *Colonial Salt Co. v. C., B. & Q. R. R. Co.*, *supra*, that they do not exceed the rates from Chicago by more than $2\frac{1}{2}$ cents and $3\frac{1}{2}$ cents. Under that tariff, however, the through charges by way of Chicago are still less than the through charges by way of St. Louis, and in that respect the adjustment on this traffic is exceptional, on all other traffic the rates being constructed, as we have explained, on arbitraries over St. Louis.

Upon the facts as disclosed upon the record now before us, and without reference to the through rates, which were not challenged by the protestants, we find and conclude that the respondents have not justified the increase in the differential over the rates from Chicago on salt from Michigan producing points to the Oklahoma destinations hereinbefore mentioned in so far as it exceeds $2\frac{1}{2}$ cents per 100 pounds, and this, we find, will be a reasonable maximum differential for the future. The rates from producing points in the state of Ohio should not exceed the rates from producing points in the state of Michigan by more than 1 cent per 100 pounds, as in the past. An appropriate order will be entered to give effect to these conclusions.

No. 6812.¹
PACIFIC MOTOR SUPPLY COMPANY
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted June 16, 1915. Decided January 20, 1916.

Rates charged for the transportation of motorcycles in carloads from Aurora and Chicago, Ill., Detroit, Mich., Milwaukee, Wis., Middletown and Wagon Works, Ohio, and Armory, Mass., to Los Angeles, San Francisco, and San Diego, Cal., found to have been unreasonable to the extent that they exceeded the first-class rates contemporaneously in effect. Reparation awarded.

O. T. Helpling, H. O. Tucker, and J. E. Helpling for complainants and interveners.

T. J. Norton and E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.

A. S. Halstead for San Pedro, Los Angeles & Salt Lake Railroad Company.

F. H. Wood, C. W. Durbrow, and G. D. Squires for Southern Pacific Company.

A. P. Matthew for Western Pacific Railway Company, Denver & Rio Grande Railroad Company, and Northern Pacific Railway Company.

C. W. Durbrow for Denver & Rio Grande Railroad Company and Western Pacific Railway Company and its receivers.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are individuals and corporations engaged in the sale of motorcycles at Los Angeles, Cal., although complainant Pacific Motor Supply Company also operates at San Francisco, Cal. By complaints, filed April 14, 27, and 28, and June 6 and 8, 1914, they allege that the rates charged by defendants on certain carload and

¹This proceeding also embraces complaints in—No. 6812 (Sub-No. 1), *W. H. Whitesell v. Chicago, Burlington & Quincy Railroad Company et al.*; No. 6812 (Sub-No. 2), *Norman W. Church v. Atchison, Topeka & Santa Fe Railway Company et al.*; No. 6812 (Sub-No. 3), *C. Will Riden v. Atchison, Topeka & Santa Fe Railway Company et al.*; and No. 6812 (Sub-No. 4), *A. M. Kupfer Company v. Atchison, Topeka & Santa Fe Railway Company et al.*

less-than-carload shipments of motorcycles from Aurora and Chicago, Ill., Detroit, Mich., Wagon Works, Ohio, and Armory, Mass. to Los Angeles, San Francisco, and San Diego, Cal., were unreasonable to the extent that they exceeded \$2.50 per 100 pounds, minimum weight 20,000 pounds, for carloads and \$3.60 per 100 pounds for less than carloads. Reparation is asked and the establishment of reasonable rates for the future. Claims were presented to the Commission informally by complainant C. Will Riden on July 28 and August 13, 1913, and by complainant W. H. Whitesell on July 28, 1913. Petitions for leave to intervene presented at the hearing by Appeal Manufacturing & Jobbing Company, Sexton & Berry, Gorton-Hoffer Company, and Edwin F. Merry, which adopted substantially the allegations and prayers of complainant Pacific Motor Supply Company were granted. Interveners are engaged in the same business as complainants at Los Angeles and San Francisco. Their shipments moved from Milwaukee, Wis., Middletown, Ohio, and Chicago to San Francisco and Los Angeles. All of the shipments involved as to which claims were presented within the statutory period are considered together and all rates are stated in amounts per 100 pounds.

The charges assessed on the shipments moved prior to December 1, 1913, were based on commodity rates of \$4, minimum weight 15,000 pounds, for carloads, and \$4.50 for less than carloads. On and after December 1, 1913, when the commodity rates were canceled the class rates governed by the western classification were applied, first-class rates for carloads, and one and a half times first-class rates for less than carloads, as follows:

Origin.	Carloads, minimum weight 12,000 pounds.	Less than carloads
Armory, Mass.	\$3.70	\$5.55
Wagon Works, Ohio	3.50	5.25
Middletown, Ohio	3.50	5.25
Detroit, Mich.	3.50	5.25
Chicago, Ill.	3.40	5.10
Aurora, Ill.	3.40	5.10
Milwaukee, Wis.	3.40	5.10

Throughout the period of the movements a commodity rate of \$2.50 applied from and to the same points on bicycles in carloads, minimum weight 10,000 pounds. Defendants had long maintained a commodity rate of \$3.60 on bicycles in less than carloads, but effective September 30, 1913, canceled it, rendering the class rates applicable. Complainants allege that the rates charged on the shipments involved were unreasonable to the extent that they exceeded the commodity rates described on bicycles.

Class rates on motorcycles in western classification territory have been considered in a number of cases and have uniformly been held unreasonable to the extent that they exceeded the class rates on bicycles: First class for carloads and one and one-half times first class for less than carloads. *Merchants Traffic Association v. A., T. & S. F. Ry. Co.*, 13 I. C. C., 283; *Rose v. Boston & Albany R. R. Co.*, 18 I. C. C., 427; *Griffing v. C. & N. W. Ry. Co.*, 25 I. C. C., 134. Following our decision in the *Rose case, supra*, the ratings on motorcycles and bicycles were established in official classification territory at first class for carload shipments and one and a half times first class for shipments in less than carloads. This rating on motorcycles in carloads was considered in *Motorcycle Mfrs. Asso. v. B. & O. R. R. Co.*, 26 I. C. C., 127, where, after citing certain previous cases, including the cases named above, we said:

We are satisfied, upon a further consideration of this question, that motorcycles as now manufactured and offered for shipment may properly be classified as first class, carloads, with a minimum of 12,000 pounds for a standard car, 36 feet in length, and the present official classification will not, therefore, be disturbed.

It had been urged in the *Rose case, supra*, that the rate on motorcycles in less than carloads from eastern points to Pacific coast terminals should not exceed the commodity rate on bicycles in less than carloads, but we held that it was unnecessary "to determine that there should be an unvarying relation between the rates on motorcycles and bicycles where they are packed and shipped in the same manner." In *Ballou & Wright v. N. Y., N. H. & H. R. R. Co.*, Docket No. 5616, unreported, the commodity rate of \$4 charged for the transportation of motorcycles in carloads from Armory to Portland, Oreg., was attacked to the extent that it exceeded the commodity rate of \$2.50 contemporaneously in effect on bicycles. We found it unreasonable to the extent that it exceeded the first-class rate of \$3.70, and awarded reparation, subsequently affirming our findings in *Ballou & Wright v. N. Y., N. H. & H. R. R. Co.*, 34 I. C. C., 120, which also concludes adversely to defendants the question raised in the instant case relative to the effect on the retail vendor's right to reparation of the arbitrary addition of \$15 to the retail price of motorcycles on the Pacific coast.

Defendants state that there is actual water competition from eastern points to the Pacific coast on bicycles in carload lots, which caused the publication of the low commodity rates involved on bicycles, but that experience established that there was practically no water competition on bicycles in less-than-carload lots, whereupon the less than carload commodity rate was canceled. An exhibit submitted by defendants shows that during the year ended June 30, 1911, 64 tons

of bicycles were forwarded from the east to Pacific coast destinations by water, and only 11 tons of motorcycles. During the year ended June 30, 1914, the water-borne traffic was 138 tons of bicycles and 9½ tons of motorcycles.

We find that the rate of \$4 per 100 pounds, minimum weight 15,000 pounds, charged complainants and interveners on the carload shipments involved that were made prior to December 1, 1913, was unreasonable to the extent that it exceeded the first-class rates contemporaneously in effect, but that the first-class rates charged on the carload shipments made subsequently to December 1, 1913, and the rates charged on the less-than-carload shipments involved are not shown to have been unreasonable. We further find that the complainants and interveners made the shipments involved as described and paid and bore charges thereon as stated; that they have been damaged to the extent of the difference between the charges paid on the shipments made prior to December 1, 1913, and the charges that would have accrued on those shipments at the first-class rates contemporaneously in effect; and that they are entitled to reparation with interest.

Complainants and interveners should prepare a statement showing as to each shipment on which reparation is claimed the date of movement, point of origin, point of destination, route, weight, car number and initials, rate and minimum weight applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared by complainants and interveners and verified by defendants we will consider further issuing an order awarding reparation.

ST L C C

No. 7409.

REEVES COAL COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY.

Submitted September 8, 1915. Decided January 21, 1916.

Defendant's failure properly to advise complainant as to the route traversed by a carload of coal from Roosevelt, Tenn., to Dell Rapids, S. Dak., and defendant's subsequent failure strictly to observe the terms of complainant's reconsigning order; *Held*, Not to be a violation of the act to regulate commerce. Complaint dismissed.

S. B. Houck for complainant.

C. A. Lahey for defendant.

REPORT OF THE COMMISSION ON REHEARING.

By THE COMMISSION:

The original report in this case appears in 34 I. C. C., 122. No error of fact was alleged in the petition for rehearing, none was found on rehearing, and no additional facts were presented. The original facts and findings therefore are restated merely for convenient reference.

Complainant alleged that unlawful charges were collected by defendant upon a carload of coal shipped from Dell Rapids, S. Dak., to Sioux Falls, S. Dak. The shipment originated at Roosevelt, Tenn. There was no joint rate from Roosevelt to Dell Rapids, and the components of the through rates were \$1.90 per ton of 2,000 pounds from Roosevelt to Milwaukee, Wis., and \$2.45 to Dell Rapids. The consignee at Dell Rapids refused the shipment and complainant disposed of it at Sioux Falls, to which point the rate on coal from Milwaukee was \$2.40. Prior to ordering transportation from Dell Rapids to Sioux Falls complainant inquired of defendant by what route the car had moved to Dell Rapids, whether by way of defendant's Iowa and Dakota division north through Sioux Falls, or by way of defendant's Southern Minnesota division to Egan, S. Dak., and thence south to Dell Rapids. The shipment had moved north through Sioux Falls, but defendant informed complainant that it had moved south through Egan. Complainant thereupon ordered the shipment forwarded to Sioux Falls, but on the condition that the order was not to be executed if the shipment could not be moved

from the original point of shipment to Sioux Falls on the lowest published rate between those stations. Despite this condition, defendant transported the shipment to Sioux Falls and collected its local rate for the movement beyond Dell Rapids. Reparation was asked, but we found the case "does not differ materially from one involving merely a misquoted rate" and dismissed the complaint.

Complainant contends that the condition precedent to defendant's accepting the diversion order was a reasonable requirement based on the general provisions of the act, but referred specifically to sections 1 and 15. The contention in substance is that defendant was required to obey complainant's instructions and that its failure to do so was unreasonable. Complainant states that it knew the rates and that the purpose of its inquiry relative to the movement of the car from Milwaukee to Dell Rapids was to prevent a back haul from Dell Rapids to Sioux Falls. If the correct answer had been given the coal could have been disposed of at Dell Rapids or north thereof. Complainant does not ask rate damages. *Joyes v. Pa. R. R. Co.*, 1 I. C. C., 361, 363. It does not allege unjust discrimination. The rates charged are not even questioned. The sole contention is that defendant should have requested further instructions in accordance with the provisions of the reconsigning order, and that in handling the shipments as it did defendant acted without authority. It is false to say that complainant urges that the spirit rather than the letter of the law has been violated and points to no specific provision of the act which defendant disregarded. Accepting the complainant's own interpretation of his direction to the defendant as being, under the circumstances, equivalent to an affirmative direction not to move the car to Sioux Falls, its carriage to that point by the defendant was not authorized. The complainant was in a position to demand that the shipment be returned to it at Dell Rapids without expense; but instead of pursuing that course it acquiesced in the unauthorized movement and accepted delivery of the shipment at Sioux Falls. It necessarily follows that there should be no departure from the established rate for that service.

Reparation is awardable only for violations of the act, and we find that no provisions of the act are shown to have been violated. Complainant is remitted to its remedy at law in a court of competent jurisdiction. The complaint therefore will be dismissed.

37 I. C. C.

No. 7465.
LUDOWICI-CELADON COMPANY
v.
MISSOURI, KANSAS & TEXAS RAILWAY COMPANY
ET AL.

Submitted July 10, 1915. Decided January 21, 1916.

Rate charged for the transportation of a carload of roofing tile from Coffeyville, Kans., to Sioux City, Iowa, not found unreasonable or unduly prejudicial. Complaint dismissed.

O. M. Rogers for complainant.

J. W. Allen for Missouri, Kansas & Texas Railway Company.

C. A. Lahoy for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in the manufacture of clay products, with its principal place of business at Chicago, Ill. By complaint, filed November 4, 1914, it alleges that the rate of 26 cents per 100 pounds charged by defendants for the transportation of a carload of roofing tile in August, 1912, from Coffeyville, Kans., to Sioux City, Iowa, was unreasonable and unduly prejudicial. Reparation is asked and the establishment of a reasonable rate for the future. The claim was presented to the Commission informally October 25, 1913.

The shipment moved: Missouri, Kansas & Texas Railway to Kansas City, Mo.; Chicago, Milwaukee & St. Paul Railway thence to destination; as routed by complainant. Charges were collected in the sum of \$78, at the class D rate of 26 cents per 100 pounds, based on a minimum of 30,000 pounds. A commodity rate of 19.5 cents per 100 pounds applied from Coffeyville to Sioux City, available in connection with the line of the initial carrier, over three routes other than the route taking the higher rate designated by complainant. The distances over these routes were 456 miles, 487 miles, and 492 miles. The distance over the route of movement was 757 miles. A commodity rate of 18 cents per 100 pounds applied by way of the Missouri Pacific Railway and designated connections to Sioux City and to St. Paul and Minneapolis, Minn., to which rate, however, the Missouri, Kansas & Texas Railway was not a party.

A rate of 20 cents per 100 pounds applied to Sioux Falls, S. Dak. with no restriction as to routing. The short-line distances to St. Paul and Minneapolis are 707 miles and 718 miles, respectively, compared with distances of 809 miles and 820 miles by way of defendants' lines and their connections. Sioux Falls is 91 miles by way of Sioux City over the short line. Complainant contends that the rate charged was unreasonable and unduly prejudicial to the extent that it exceeded a rate of 18 cents per 100 pounds. The contention is based exclusively on the rates just described. Tariffs on file with the Commission disclose that the 20-cent rate to Sioux Falls applied through Sioux City, creating a departure from the long-and-short-haul rule of the fourth section of the act. The departure is protected by Fourth Section Application No. 1862, filed by W. H. Homer, agent, which was not set for hearing with the complaint and therefore can not be considered in this proceeding.

There is no apparent necessity for the establishment of an additional route from Coffeyville to Sioux City, and the mere fact that other routes were available over which complainant might have consigned the shipment involved at a lower rate than the rate charged is not enough to prove the charges assailed unreasonable or unduly prejudicial.

We find that the rate assailed is not shown to have been unreasonable or unduly prejudicial, and an order will be entered dismissing the complaint.

87 I. C. C.

No. 7693.
PASSOW & SONS
v.
**CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY.**

Submitted July 23, 1915. Decided January 21, 1916.

Charges collected for the transportation of a carload of billiard tables and fixtures from Des Moines, Iowa, to Chicago, Ill., not shown to have been unreasonable or unjustly discriminatory. Complaint dismissed.

A. J. Killen for complainant.

J. N. Davis for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of saloon fixtures and billiard and pool tables at Chicago, Ill. By complaint, filed January 23, 1915, it alleges that the charges collected by defendant for the transportation of a shipment of billiard tables and fixtures from Des Moines, Iowa, to Chicago were unreasonable and in violation of section 2 of the act. Reparation is asked.

The shipment weighed 10,100 pounds and moved February 1, 1913, consigned by the Blue Line Transfer & Storage Company to its order, notify Charles Passow & Sons. Charges were collected in the sum of \$80 at the carload rate of 40 cents per 100 pounds, minimum 20,000 pounds, governed by the western classification. Complainant alleges that it did not request the exclusive use of the car and that charges should have been assessed at the less-than-carload rate of 60 cents per 100 pounds applied to actual weight. Defendant maintains that it was requested to place a car for loading on the sidetrack of the consignor, and that it is not its practice to place cars at that point for the receipt of less-than-carload freight. The bill of lading does not show the weight nor does it appear that complainant complied with rule 27 of western classification, I. C. C. No. 8, governing the movement, which requires that—

each bundle, package, or piece of less-than-carload freight must be plainly, legibly, and durably marked, showing the name of the consignee (if "to order" full address of party to be notified must be shown), and the name of the station, town, or city and the state to which destined.

The shipment was loaded by the consignor and unloaded by the consignee. No witness having actual knowledge of the circumstances surrounding the ordering of the car appeared at the hearing, and there is no evidence of record to justify the allegation that it was to be forwarded as a less-than-carload shipment either with or without other loading. No evidence was introduced to support the allegation of unjust discrimination.

We find that the charges assailed are not shown to have been unreasonable or otherwise in violation of the act, and an order dismissing the complaint will be entered.



No. 7589.

ABEL & ROBERTS

v.

MISSOURI PACIFIC RAILWAY COMPANY ET AL.

Submitted June 28, 1915. Decided January 21, 1916.

Rate charged for the transportation of brick in carloads from Buffalo, Kans., to Beatrice, Nebr., not found unreasonable. Complaint dismissed.

H. G. Denison for complainants.

K. F. Burgess for Chicago, Burlington & Quincy Railroad Company.

F. G. Wright for Missouri Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are copartners engaged in the general contracting business under the firm name of Abel & Roberts, with their principal office at Lincoln, Nebr. By complaint, filed December 14, 1914, they allege that the rate charged by defendants for the transportation of 14 carloads of brick from Buffalo, Kans., to Beatrice, Nebr., was unjust and unreasonable. Reparation is asked.

The shipments moved between April 28 and May 13, 1913, by way of the Missouri Pacific and the Chicago, Burlington & Quincy railroads. Charges were collected at a rate of 11 cents per 100 pounds based on the marked capacity of the cars. A revision of the rates on brick took effect April 2, 1913, in which the rate from Buffalo to

ST. L. & O.

Beatrice was reduced to 10½ cents over all routes except the route of movement. The omission is attributed to oversight on the part of the Missouri Pacific, which published the tariff, specific notice having been given by the Chicago, Burlington & Quincy to include that road as a participating carrier. The alleged error was corrected May 15, 1913, when the 10½-cent rate became effective over the route of movement. Complainants admit that they were fully aware of the lower rate applicable over other routes and continued to ship by the route over which the higher rate applied on the assumption that the 11-cent rate was published in error and that refund of one-half cent per 100 pounds would be authorized by the Commission.

No evidence was introduced tending to prove the rate charged inherently unreasonable. Defendants admitted on our special docket that the rate was unreasonable, but the admission evidently was made solely to secure authority to make refund, inasmuch as the answers to the formal complaint denied that complainant is entitled to reparation or that the rate of 11 cents was unreasonable. We have often held that the existence of lower rates over routes other than a particular route of movement and the subsequent reduction of the rate over the particular route of movement to the same level is not alone sufficient to establish the unreasonableness of the previous rate. Convenient routes were available to complainants by which the rate sought applied, and the damage alleged could have been avoided.

We find that the rate assailed is not shown to have been unreasonable, and the complaint will be dismissed.

87 L. Q. Q.

No. 7699.
CUMBERLAND GLASS MANUFACTURING COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted June 7, 1915. Decided January 21, 1916.

Rate of 13 cents per 100 pounds charged by defendants for the transportation of glass bottles in carloads from Swedesboro, N. J., to Bedford, N. Y., not shown to have been unreasonable, unjustly discriminatory, or otherwise illegal.

S. B. Smith and C. W. Paris for complainant.

F. L. Ballard for Pennsylvania Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in the manufacture of glass bottles, with its principal office at Bridgeton, N. J. By complaint, filed January 27, 1915, it alleges that the rate of 13 cents per 100 pounds charged by defendants for the transportation of four carloads of glass bottles from Swedesboro, N. J., to Bedford, N. Y., during the period from June 16, 1913, to July 18, 1913, was unreasonable, unjustly discriminatory, and in violation of section 4 of the act to regulate commerce. Reparation is asked.

Swedesboro is on the line of the West Jersey & Seashore Railroad, operated by the Pennsylvania Railroad Company, 20 miles southeast of Philadelphia, Pa. Bedford is a suburb of South Brooklyn, N. Y., on the line of the South Brooklyn Railway. The shipments moved over the lines of the carriers named, in connection with the Pennsylvania Railroad as an intermediate carrier. The fifth-class rate, applicable to the traffic, was charged. This rate was in effect for about three years, but has been increased 5 per cent to 13.7 cents since the complaint was filed.

Complainant contends that the rate charged was unreasonable and unjustly discriminatory to the extent that it exceeded 10.5 cents. A fifth-class rate of 10.5 cents applied over defendants' lines on bottles from Philadelphia, and a commodity rate of 10.5 cents from Bridgeton and Fairton, N. J., to Bedford over the Central Railroad of New Jersey and South Brooklyn Railway. A commodity rate of 15 cents applied over defendants' lines on bottles from Bradford, Pa., to Bedford. Swedesboro is located south of New Jersey points which take

Philadelphia rates to Bedford, and no evidence was offered to show that Swedesboro should take the Philadelphia rate to Bedford.

Complainant also cites a rate on bottles from points on the Central Railroad of New Jersey in New Jersey that are about as far as Swedesboro from Bedford. Bridgeton, one of the points cited, is also served by the West Jersey & Seashore Railroad, but the Pennsylvania Railroad, operating the West Jersey & Seashore Railroad from Bridgeton, does not, in connection with the South Brooklyn Railway, meet the rate on bottles to Bedford maintained by the Central Railroad of New Jersey and the South Brooklyn Railway. Defendant Pennsylvania Railroad does not participate in commodity rates on bottles from New Jersey points to any point on the South Brooklyn Railway. When the shipment involved moved, the Pennsylvania participated in a 10.5-cent commodity rate from Swedesboro and other New Jersey points to Brooklyn stations on the Long Island Railroad, in which it owns the majority of stock, but low joint commodity rates to South Brooklyn Railway points have been considered inadvisable for the reasons that the earnings would have to be divided with the West Jersey & Seashore Railroad and the South Brooklyn Railway, and that payments for services by the Bush Terminal in New York would have to be absorbed. The 15-cent rate from Bradford to Bedford, 456 miles, is 1 cent less than the fifth-class rate, and defendants assert that it is depressed by the influence of competing lines to New York and therefore does not afford a fair measure for rates from south New Jersey points.

No evidence was offered to show that the rate attacked was unjustly discriminatory or in violation of section 4.

We find the rate assailed is not shown to have been unreasonable, unjustly discriminatory, or otherwise illegal, and the complaint will be dismissed.

87 I. C. C.

No. 7824.
STANDARD LUMBER COMPANY
v.
ATLANTA & WEST POINT RAILROAD COMPANY.

Submitted July 13, 1915. Decided January 21, 1916.

Demurrage in the sum of \$8 on a carload of lumber shipped from Noma, Fla., to West Point, Ga., not found to have been collected unlawfully. Complaint dismissed.

J. T. Slatter for complainant.

M. P. Callaway for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in the wholesale lumber business with its principal office at Birmingham, Ala. By complaint filed March 4, 1915, it alleges that defendant unlawfully collected \$8 demurrage on a carload of lumber shipped September 13, 1913, from Noma, Fla., to West Point, Ga. Reparation is asked.

The car was consigned to complainant and reached West Point September 17, 1913. Complainant states that it notified defendant's agent at West Point by a letter dated September 15, 1913, to deliver the car to W. C. Batson, who would pay all charges. Neither the original letter nor any copy thereof was introduced. The car was delivered to W. C. Batson September 29, 1913, after \$8 demurrage had accrued, which complainant ultimately paid. Defendant denies that its agent at West Point received complainant's alleged letter of September 15 or any other notice of disposition desired by complainant that would have enabled defendant to deliver the shipment before it did.

We find that notice by complainant to defendant relative to the disposition of the car, in time to prevent the accrual of the demurrage involved, is not established, and the complaint accordingly will be dismissed.

No. 7952.

ODEN-ELLIOTT LUMBER COMPANY

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILROAD
COMPANY ET AL.

Submitted July 12, 1915. Decided January 21, 1916.

A carload of lumber from Lorne, Ala., to Richmond, Ky., found to have been overcharged, but the legal rate not found to have been unreasonable. Complaint dismissed.

J. T. Slatter for complainant.

William Burger for Louisville & Nashville Railroad Company.

J. E. Telford for Atlanta, Birmingham & Atlantic Railroad Company and E. T. Lamb, its receiver.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business, with its principal office at Birmingham, Ala. By complaint, filed April 26, 1915, it alleges that the rate of 24 cents per 100 pounds charged by defendants for the transportation of a carload of lumber shipped March 16, 1914, from Lorne, Ala., to Richmond, Ky., was unreasonable and in violation of section 4 of the act to regulate commerce. Reparation is asked.

Lorne is a local station on the Atlanta, Birmingham & Atlantic Railroad about 38 miles east of Birmingham. The shipment weighed 50,200 pounds and was moved by the Atlanta, Birmingham & Atlantic from Lorne to Birmingham, and by the Louisville & Nashville from Birmingham north through Louisville to La Grange, Ky., and thence southeast to Richmond. Charges were collected in the sum of \$130.52 at a rate of 26 cents per 100 pounds, but subsequently defendants refunded \$10.04, retaining \$120.48 on the basis of a rate of 24 cents per 100 pounds. The rate legally applicable was 23 cents, 4 cents from Lorne to Pelham, Ala., and 19 cents from Pelham through Birmingham to Richmond. The shipment therefore was overcharged, and defendants are willing to make reparation on the basis of this rate. Complainant contends, however, that a reasonable rate should not have exceeded 19 cents per 100 pounds, which was the rate from Lorne to Covington, Ky., to which complainant asserts that Richmond is intermediate.

Richmond is intermediate to Covington from Lorne by way of Wellington, Ala., Cartersville, Ga., and Knoxville, Tenn., but not by way of Louisville and La Grange, and the 19-cent rate cited from Lorne to Covington applied only by way of Louisville and La Grange. Effective April 1, 1914, however, the rate from Lorne to Richmond by way of Louisville and La Grange was reduced to 19 cents. Covington is 536 miles from Lorne by way of La Grange; Richmond, 551 miles.

The reduction of the rate from Lorne to Richmond to 19 cents after the complaint was filed is attributed to the reduction of rates to neighboring points in the course of the general readjustment of rates that followed our order in *Fourth Section Application 542 et seq.*, 25 I. C. C., 50, and to the fact that Richmond is intermediate to Covington from Lorne over some routes. Effective October 25, 1915, the rates from Lorne to both Richmond and Covington were reduced to 18.5 cents.

We find upon the facts disclosed that the rate assailed is not shown to have been unreasonable, and the complaint will be dismissed. But defendants should promptly make refund to complainant on basis of the 23-cent rate that was lawfully applicable.

87 I. C. C.

No. 7786.
PADUCAH BOARD OF TRADE
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted October 30, 1915. Decided January 21, 1916.

Upon complaint that the rates on logs and lumber to Paducah, Ky., from points in Louisiana and Arkansas are unreasonable and unjustly discriminatory as compared with the rates from the same producing territory to Cairo, Ill.; *Held*:

1. The rates to Paducah are shown to be unreasonable.
2. The rates to Paducah are shown to be unjustly discriminatory as compared with the rates to Cairo. Defendants required to establish joint rates to Paducah via either Cairo, Ill., or Memphis, Tenn., not in excess of the rates contemporaneously maintained to Cairo. Findings in *Paducah Board of Trade v. I. C. R. R. Co.*, 29 I. C. C., 583, affirmed.

J. V. Norman for complainant.

Charles Rixey, jr., for Illinois Central Railroad Company.

E. A. Haid, A. L. Burford, H. G. Herbel, F. G. Wright, and W. F. Dickinson for other defendants.

F. M. Ducker and Ray Williams for Cairo Association of Commerce, interveners.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

In *Paducah Board of Trade v. I. C. R. R. Co.*, 29 I. C. C., 583, it was alleged, among other things, that the rates on logs and lumber to Paducah, Ky., from points in Arkansas and Louisiana on and south of the Memphis-Little Rock line of the Chicago, Rock Island & Pacific Railway were unreasonable and unjustly discriminatory as compared with the rates from the same producing territory to Cairo, Ill. The evidence in that case showed that the distances to Paducah from the points of origin via Memphis are less than the distances via Cairo. We said:

Since the complaint did not contain a specific request for the establishment of through routes and joint rates, we can not order their establishment via Memphis. However, we believe that since the short-line distances from points west of the Mississippi and south of the line of the Chicago, Rock Island & Pacific from Memphis to Little Rock are not greater to Paducah than to Cairo, defendants should be required to establish from points or groups substantially equidistant from Cairo and Paducah rates to Paducah over the present routing, unless they elect to do so over the more direct route via Memphis, no higher than the rates contemporaneously maintained from the same points to Cairo.

The rates to Paducah from points west of the river should not be lower than those to Cairo, because in hauling from west-side points to Paducah the Mississippi must be crossed as well as in hauling to Cairo. Under these requirements the St. Louis, Iron Mountain & Southern and the St. Louis Southwestern may haul lumber originating on their lines or their connections via Cairo if they so desire. The Chicago, Rock Island & Pacific will, of course, route its traffic as at present, via Memphis.

We find that defendants unduly discriminate against the dealers and manufacturers of lumber at Paducah to the undue preference and advantage of those located at Cairo by the maintenance of the rates on lumber at present in effect from the producing points herein involved. * * * The defendants who operate west of the Mississippi River will be required to maintain rates to Paducah from substantially equidistant points or groups in Arkansas and Louisiana west of the river, on and south of the line of the Chicago, Rock Island & Pacific from Memphis to Little Rock no higher than those contemporaneously maintained from the same points to Cairo.

Carriers will be expected by May 1, 1914, to revise their tariffs in accordance with the views expressed in this report. Pending such revision the case will be held open for such further proceedings and order as the Commission may deem necessary.

The complainant now alleges that "defendants have failed to even attempt to comply with said findings," and the Commission is asked to require the defendants to establish through routes and joint rates from the points in question to Paducah not in excess of the rates contemporaneously maintained from the same points to Cairo. It is again alleged that the rates on lumber to Paducah are unreasonable and unjustly discriminatory. The Cairo Association of Commerce intervened.

Paducah is situated on the south bank of the Ohio River 42 miles east of Cairo. Its population is about 25,000. There are a number of manufacturers of lumber and wood articles at Paducah who compete with manufacturers located at Cairo. Cairo, whose population is approximately 17,000, is located at the extreme southern end of Illinois, at the confluence of the Mississippi River and the Ohio River. Both Paducah and Cairo obtain a part of their lumber from west of the Mississippi River. Most of the traffic from the lumber-producing territory west of the river to Paducah is handled through Cairo, and the Paducah rates are made by combination on Cairo, the rate from Cairo to Paducah being 6 cents per 100 pounds. The west-side lines do not reach Paducah, so that at least two carriers participate in the hauls from Arkansas and Louisiana points to Paducah.

The principal issue in the present case is whether it is appropriate or lawful to require the defendants to establish through routes and joint rates to Paducah via Memphis. In the previous case we held that the Memphis route was the natural route for the movement of this traffic, but as the complaint did not contain a prayer for through

routes we did not require their establishment. The defendants earnestly insist not only that the Memphis route is an unnatural one but that the Commission could not lawfully establish through routes and joint rates via that route. The latter contention is based on that portion of section 15 of the act to regulate commerce which provides that the Commission, in establishing a through route, shall not require any carrier, without its consent, to embrace therein substantially less than the entire length of its railroad lying between the termini of the through route unless to do so would make such through route unreasonably long as compared with another practicable route.

Three routes for hauling lumber from the points of origin to Paducah were discussed by the witnesses—the Bird's Point route, the Thebes route, and the Memphis route.

Until somewhat more than two years ago the Iron Mountain and the St. Louis Southwestern handled their traffic from the southwest through Bird's Point, Mo., from which a car ferry was operated to Cairo. An "incline" connected the tracks of the rail lines with the car ferry. More than two years ago this incline was washed away, and since that time these carriers have been unable, even with the assistance of government engineers, to find a point on the west bank of the river in this vicinity at which a similar incline can be permanently located. They therefore haul the traffic via Illmo, Mo., and Thebes, Ill., thence a distance of 28 miles over the tracks of the Chicago & Eastern Illinois Railroad and the Illinois Central Railroad to Cairo. The distance via the Bird's Point route are approximately 30 miles less than the distances via Thebes, and the defendants insist that in determining the reasonableness or unreasonableness of the Memphis route the distances via Memphis should be compared with the distances via Bird's Point. There can be no question, however, of the impropriety of measuring distances over a route which has been closed for more than two years, especially since there is no prospect of its being reopened in the immediate future.

In the previous report we held that the distances to Paducah via Cairo are so much greater than the distances via Memphis that "the natural route from the points west of the Mississippi here involved is via Memphis rather than via Cairo." Nothing appears in the present record to convince us that that finding should be modified.

Exhibits filed by the defendants show that the average distance to Paducah via Thebes from 10 representative points on the St. Louis Southwestern Railway is 381.3 miles, while the average distance from the same points via Memphis is 360.8 miles. From 12 typical points on the St. Louis, Iron Mountain & Southern Railway the average

distance to Paducah via Memphis is 501 miles, as compared with 550 miles via Thebes. From 11 representative producing points on the Chicago, Rock Island & Pacific Railway the average distances via Memphis and Thebes are 501 miles and 544.6 miles, respectively. In computing these distances via Thebes, however, no allowance was made for the constructive mileage of the Cairo bridge. In our previous report we observed that in reaching Paducah via Thebes it is necessary to cross both the Mississippi River and the Ohio River, while only the former must be crossed if the Memphis route is used. In a number of recent cases the carriers have maintained that the bridges spanning these rivers, and especially the one at Cairo, are expensive, and that the cost of their construction and maintenance should be reflected in the rates. It is clear, at any rate, that in determining the relative reasonableness or practicability of two routes the operating conditions are entitled to consideration. The principal defendants in this case were respondents in *Rates on Lumber from Southern Points*, 34 I. C. C., 652. It was shown by the respondents in that case that at some of the crossings it actually costs the carriers 2.1 cents per 100 pounds to haul lumber across the Ohio River; that the cost of the Cairo bridge, as of January 30, 1915, was \$3,731.852.47; and it was argued that in view of these facts the Commission should permit the respondents to increase their rates on lumber from points in the south to points located on the north bank of the Ohio River; and that "it is difficult to conceive upon what ground it could be urged that the carriers should be required to absorb all bridge tolls in all directions at all crossings."

Two of the defendants, the St. Louis Southwestern Railway and the Chicago, Rock Island & Pacific Railway, maintain that it would be peculiarly unjust to them to require the establishment of through routes and joint rates via Memphis. The former carrier does not reach Memphis with its own rails. A contract entered into several years ago by the St. Louis Southwestern and the St. Louis, Iron Mountain & Southern provides that the former shall deliver to the latter at Fair Oaks, Ark., all freight originating on the line of the former, or its connections, and consigned to or through Memphis. The contract also provides that the St. Louis, Iron Mountain & Southern shall receive 3 cents per 100 pounds for its haul from Fair Oaks to Memphis. The St. Louis Southwestern shows that a shipment originating, for example, at Winnfield, La., would move over the line of the Louisiana & Arkansas Railroad from Winnfield to Stamps, Ark., thence over the St. Louis Southwestern from Stamps to Fair Oaks, thence over the St. Louis, Iron Mountain & Southern from Fair Oaks to Memphis, and finally over the Illinois Central

from Memphis to Paducah. The originating carrier, the Louisiana & Arkansas Railroad, at present receives a division of 7 cents per 100 pounds out of the through rate, the Iron Mountain 3 cents, and the Illinois Central 6 cents, a total of 16 cents. The St. Louis Southwestern points out that the present rate from Winnfield to Cairo is 16 cents, and that if the same rate were extended to Paducah that carrier would receive nothing for its haul from Stamps to Fair Oaks. The question of divisions, however, is not involved in this proceeding.

On behalf of the Chicago, Rock Island & Pacific Railway it is contended that its rates to Cairo are depressed by the severest competitive influences, and that since the same competition is not encountered at Paducah it would be unjust to require this carrier to extend its Cairo rate to Paducah. The Rock Island, in compliance with our previous report, filed a tariff naming the same rates to Paducah as to Cairo, but that tariff was suspended in *Rates on Lumber from Southern Points, supra*, and this defendant joins with the others in contending that Paducah is not entitled to the Cairo rates.

The Rock Island does not reach either Cairo or Paducah with its own rails. Its Cairo traffic may be turned over to the St. Louis & San Francisco Railroad at Bridge Junction, Ark., opposite Memphis, or to the Illinois Central at Memphis. Its Paducah traffic is turned over to the Illinois Central or the Nashville, Chattanooga & St. Louis at Memphis. The Rock Island serves a territory in Arkansas and Louisiana which is also reached by several other carriers, two of which have direct lines to Cairo. To compete for Cairo traffic it is necessary for the Rock Island, in conjunction with the St. Louis & San Francisco Railroad or the Illinois Central Railroad, to meet the rates to Cairo established by the direct lines, although the haul in which the Rock Island participates involves at least two lines and in many instances three lines. In view of these facts the Rock Island maintains that its rate to Cairo is depressed by competitive conditions which do not exist at Paducah, and that the rates to Paducah should therefore be higher than the rates to Cairo. This evidence was before us in the previous case and was again introduced by the respondents in *Rates on Lumber from Southern Points, supra*. In the latter case, at pages 671 and 672, we said:

It is further urged on behalf of the southwestern respondents generally that the 16-cent rate to Cairo was made by lines which have a single line from the points of origin to that gateway, and that it would be manifestly unjust for this Commission to compel such a line as the Texas & Pacific, whose traffic can not reach Cairo by a one-line haul, to continue the publication of the 16-cent rate to that point. Exhibits filed on behalf of the respondents, however, show that most of the lumber from the yellow-pine blanket moves to Cairo by two or more lines. It is shown that for six alternate months in 1911 and

1912 the total movement of yellow-pine lumber from the blanket to Cairo proper was 1,141 cars. Of this number only 81 cars moved over a single line, 851 over two lines, 205 over three lines, and 4 cars over four lines. Of 787 cars moving from the yellow-pine blanket, as a whole, to St. Louis, East St. Louis, Cairo, and Thebes, more than one-half moved over two lines. The conclusion is inevitable, therefore, that the argument of the Texas & Pacific that it does not reach Cairo with its own line can not be accepted as conclusive evidence of the unreasonableness of the 16-cent rate.

* * * * *

It is further urged on behalf of the Rock Island, the Vicksburg, Shreveport & Pacific, and Morgan's Louisiana & Texas Railroad that considerations similar to those above set forth make it inequitable to require those lines to comply with our decision in the *Paducah case*, though the rates in the suspended tariffs are in compliance therewith. It is alleged that Paducah is not fairly comparable with Cairo, and that the Commission should recognize the natural advantages of Cairo. This evidence was before us when the *Paducah case* was decided, and nothing appears in the present record which convinces us that our conclusion should be changed.

Nor can we agree that the rate to Cairo is unduly low. In *Rates on Lumber from Southern Points, supra*, the respondents, including all of the railroads serving this territory, proposed to increase from 16 cents to 17 cents the rate on yellow-pine lumber from the southwestern blanket to Thebes and Cairo proper. Complete evidence was submitted in that case as to the quantity of movement, the number of lines participating in the hauls, the history of the rates, the financial condition of the respondents, and the operating conditions under which the traffic is transported. We concluded that the proposed increased rate was not shown to be reasonable.

There appears to be no reason for permitting the Rock Island to charge a higher rate to Paducah than to Cairo. As we have already stated, the route to Paducah in which the Rock Island participates is the natural and logical route. If the Rock Island desires to compete at Cairo with the more direct lines reaching that point, it may do so, but to avoid unjust discrimination it must publish the same rate to Paducah.

The defendants lay some emphasis on the fact that Cairo is a natural "rate-breaking" point, and that rates from the southwest to points north and east of Cairo are almost invariably made by combination on Cairo, the inference being that the Paducah rates should be similarly constructed. It is further contended that if joint rates are established to Paducah on the Cairo basis, other cities located north and east of Cairo, St. Louis, and other rate-breaking points may logically ask that they be similarly favored. The Rock Island goes so far as to contend that since the distance from Memphis to Paducah is about 170 miles the extension of the Cairo rates to Paducah might logically be followed by extending them to all points 170 miles from Memphis, such as Winfield, Ala., Leighton,

Ala., and Pickens, Miss. This contention disregards everything but distance, and its impropriety is obvious. The contention that the Paducah rates should be constructed by combination on Cairo disregards the essential features of this situation, namely, that the Cairo route is not the natural or logical route for the movement of this traffic to Paducah. To the defendants' contention that the extension of the Cairo rates to Paducah will lead to demands from other points for similar rates the answer is that unjust discrimination against one point can not be permitted to continue for fear of the results of its elimination.

The evidence abundantly confirms our previous finding that the present rates to Paducah are unjustly discriminatory and give an undue preference to Cairo. In spite of Paducah's favorable location, and in spite of the fact that the distances to Paducah via Memphis are not greater than the distances to Cairo, the rates to Cairo have been much lower than the rates to Paducah, and the lumber industry at the latter point has not developed nearly as rapidly as at Cairo. At least two companies have recently moved their plants from Paducah to Cairo because of the more favorable rates to the latter point.

We adhere to our former finding that the defendants unduly discriminate against Paducah to the undue preference and advantage of Cairo by the maintenance of their present rates on logs and lumber from the producing points here involved. We further find that the rates on logs and lumber to Paducah from points of origin in the territory involved are unreasonable to the extent that they exceed the present rates to Cairo. We further find that the defendants should establish through routes to Paducah from points or groups in Arkansas and Louisiana west of the Mississippi River, on and south of the line of the Chicago, Rock Island & Pacific Railway from Memphis to Little Rock, Ark., including Des Arc, Ark., and joint rates applicable via such through routes no higher than the rates at present maintained from the same points or groups to Cairo. These through routes and joint rates may be established via either Memphis or Cairo.

An appropriate order will be entered.

INVESTIGATION AND SUSPENSION DOCKET No. 616.
HARNESS TO OKLAHOMA.

Submitted October 15, 1915. Decided February 14, 1916.

1. Proposed cancellation of commodity rates on harness and saddlery and saddlery hardware, from Dallas, Waco, Paris, Fort Worth, Little Rock, Fort Smith, and other points in Texas and Arkansas, and from Shreveport, La., to points in Oklahoma, found to be justified, and order of suspension vacated.
2. Harness and saddlery and saddlery hardware are less-than-carload articles of high grade, rated in the upper classes, and move almost invariably at class rates. The cancellation of the commodity rates will, therefore, restore as to that traffic the usual basis of charge. It will also remove the disadvantage of competing manufacturers at Kansas City and other points who pay the class rates into Oklahoma, certain of whom have complained.

Thomas Bond for St. Louis & San Francisco Railroad Company and receivers; Paris & Great Northern Railroad Company; and St. Louis, San Francisco & Texas Railway Company and receivers.

J. F. Garrin for Missouri, Kansas & Texas Railway Company; Missouri, Kansas & Texas Railway Company of Texas; Houston & Texas Central Railroad Company; Galveston, Harrisburg & San Antonio Railway Company; Houston, East & West Texas Railway Company; and Texas & New Orleans Railroad Company.

R. N. Rowland for Chicago, Rock Island & Pacific Railway Company and Chicago, Rock Island & Gulf Railway Company.

A. Landry for Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company.

G. S. Maxwell for Dallas Chamber of Commerce and other interveners.

G. T. Atkins, jr., for Shreveport Chamber of Commerce, Lee Hardware Company, and Thomas Ogelvie Hardware Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

For some years past harness, saddlery, and saddlery hardware from Dallas, Waco, Paris, Fort Worth, Fort Smith, Little Rock, and other points in the states of Texas and Arkansas, and from Shreveport, in the state of Louisiana, to various points in Oklahoma have moved on commodity rates. By the schedules succeeding, upon the protest of various commercial interests at Dallas

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Shreveport, and Oklahoma City, it was proposed by canceling those rates to make the class rates effective on this traffic. About 90 per cent of the articles covered by the terms harness, saddlery, and saddlery hardware in western classification move on first-class rates, about 7 per cent on second-class, and 3 per cent on fourth-class rates. Using Durant, Chickasha, Muskogee, and McAlester as representative destinations in the state of Oklahoma, the commodity rates in effect at the time of the hearing and the increased rates that would result from the new tariffs, are shown in the following table, Dallas and Shreveport being taken as typical points of origin:

To—	From Dallas.		From Shreveport.	
	Old rates.	New rates.	Old rates.	New rates.
Durant.....	48 41	50 45 34 74	73	0.96 .84 .62 1.40
Chickasha.....	55	65 40 86	80	1.20 .89 1.30
Muskogee.....	55	75 53 71	80	1.13 .90 1.27
McAlester.....	55	63 46	80	1.11 .81

While this proceeding was pending, and shortly after the hearing had been had, the respondent, the St. Louis & San Francisco Railroad Company, by tariff filed to become effective on August 18, 1915, reduced the class rates from Shreveport to certain destinations on its lines in the state of Oklahoma. The first, second, and fourth class rates from Shreveport to Durant, for example, were reduced from \$1.26, \$1.06, and \$0.81 to 96, 84, and 62 cents, respectively.

It will be noted from the table that the proposed increases in the rates from Dallas are not so great as the increases proposed from Shreveport. A large part of the state of Louisiana, not including Shreveport, is at present blanketed under one rate on traffic into Oklahoma, this being due, as the respondents state, to the wide diversity of routes of the various lines from Louisiana into Oklahoma, some of the latter operating west and some east of the Mississippi River and certain of them through Memphis.

The commodity rates in question were first established from Dallas, then from other points in Texas, and still later from Shreveport and points in Arkansas. This action was taken by the carriers when Oklahoma was a territory and, as is stated, to assist in building up the traffic of the carriers. With the development of Oklahoma as a state, however, a harness manufacturing establishment was started at Okla-

homa City, and in 1912 complaint was made to the carriers by the traffic association of that city that these commodity rates placed the Oklahoma manufacturers at an undue disadvantage on traffic shipped wholly within that state. Oklahoma state traffic moves on class rates prescribed by the railroad commission of that state, the rates being published by the carriers under a protest noted on their tariffs. The carriers were advised by the traffic association of Oklahoma City that unless the commodity rates here under consideration were canceled a complaint against the state rates would be made to the Corporation Commission of Oklahoma. Such a complaint is now on file with that commission, but was placed upon the suspense docket at the request of the complainant when the tariffs under suspension in the proceeding now before us were filed. Manufacturers at Kansas City also pay the class rates on shipments of these commodities into the state of Oklahoma, and in 1914 the transportation bureau of that city advised the respondents that if the commodity rates into Oklahoma were maintained from the points of origin involved in this proceeding this Commission would be asked to issue an order directing the removal of the discrimination either by the establishment of commodity rates from Kansas City or by the cancellation of the commodity rates of which complaint was made.

The position of the respondents is that harness, saddlery, and saddlery hardware are high-grade articles which move almost invariably in less-than-carload quantities and at class rates, commodity rates being a marked exception to the rule. They contend also that the situation is one that should be dealt with in this proceeding along the broad lines of classification, in that manner removing the discrimination which at present exists against the manufacturing points from which the class rates apply, and leaving for consideration in a further proceeding, if that should be necessary, the question of the reasonableness of the class rates from the several points into Oklahoma, and their relation one to the other. The protestants, on the other hand, assert that they are interested only in the volume of the rate, whether it be called a class rate or a commodity rate. While this is doubtless the case we can not ignore the fact that rates for the transportation service are divided into class rates and commodity rates and that some articles, such as coal, lumber, sand, and other products which move in large volume and in carload quantities, are usually accorded commodity rates, while articles of general merchandise, of which harness, saddlery, and saddlery hardware are highly representative, moving in less-than-carload quantities, usually take the class rates. What might be primarily a rate question in one case therefore might properly be considered a classifi-

cation problem in another, and the proceeding now before us is essentially a classification matter. The record shows clearly that commodity rates on this traffic constitute a departure from the usual basis and result in an undue preference of the manufacturing points from which they apply.

The class rates from Dallas and other Texas points are those prescribed by us as maximum rates in *Corporation Commission of Oklahoma v. A. & S. Ry. Co.*, 26 I. C. C., 520. The manufacturers of Dallas come into competition with the manufacturers at Kansas City, St. Joseph, and St. Louis, from which points the class rates apply. The discrimination against those points could, of course, be removed either by a reduction in their class rates or by an increase in the commodity rates here involved. The mere fact, however, that the respondents voluntarily established and have maintained these commodity rates for a number of years would not justify us in requiring their continuance in the face of a showing that they should be canceled and restored to the usual customary rate basis. In *Rates on Knitting Factory Products*, 25 I. C. C., 634, we said:

To the extent that jobbers in Little Rock and Fort Smith have been enabled to extend their trade solely by reason of preferences in rates such preference should be removed rather than continued.

And that principle is equally applicable here.

Upon the whole record we have reached the conclusion, and so find, that the respondents have justified the proposed cancellation of the commodity rates here involved. The cancellation of certain of the commodity rates under suspension in this proceeding was considered also in *1915 Western Rate Advance Case—Part II*, 37 I. C. C., 114, 146. Following our order in that proceeding the tariff under suspension therein was directed to be canceled on or before January 31, 1916, but without prejudice to such future disposition of these rates as might be made in this proceeding. By a tariff filed to become effective January 19, 1916, the commodity rates in question were restored pending our decision in this proceeding. We wish to be understood here as holding only that the cancellation of the commodity rates on this particular traffic and the application thereto in the future of the class rates has been justified. The class rates from Shreveport to some of the Oklahoma destinations here involved are under consideration in *Shreveport Chamber of Commerce v. K. C. S. Ry. Co.*, now pending, and it will be understood that our finding here is subject to any conclusions that may be reached and announced in the case just mentioned.

An order will be entered vacating the various orders of suspension herein involved.

No. 6366.
BIG BASIN LUMBER COMPANY ET AL.
v.
SOUTHERN PACIFIC COMPANY ET AL.

Submitted May 16, 1914. Decided January 20, 1916.

Allegations that defendants' rates are unreasonable for the transportation of lumber and forest products from points in California and southern Oregon to various destinations in the east, and that competitors operating in Oregon and Washington, in the "inland empire" and in Mexico are unduly preferred, not sustained. Complaint dismissed.

***F. D. Madison, O. K. Cushing, and I. E. Richter* for complainants
C. W. Durbrow for Southern Pacific Company.**

***E. W. Camp* for Atchison, Topeka & Santa Fe Railway Company.**

***H. A. Scandrett* for Union Pacific Railroad Company.**

***W. F. Dickinson* and *S. H. Johnson* for Chicago, Rock Island & Pacific Railway Company and Chicago, Rock Island & Gulf Railway Company.**

***D. M. Swobe* for McCloud River Railroad Company.**

***A. P. Matthew* for Western Pacific Railway Company.**

***Hawkins & Franklin* and *W. C. Barnes* for El Paso & Southwestern system.**

***S. V. Carey* and *E. M. Fronk* for Western Pine Manufacturers' Association, intervener.**

***F. G. Donaldson* for West Coast Lumber Manufacturers' Association, intervener.**

***W. C. McCulloch* for West Coast Lumber Manufacturers' Association and Eastern Oregon Lumber Producers' Association, interveners.**

***J. S. Burchmore, A. P. Bryant, and W. D. Clumpner* for Anson, Gilkey & Hurd Company, intervener.**

REPORT OF THE COMMISSION.

HALL, Commissioner:

Complainants manufacture lumber and forest products in California and southern Oregon. They allege that defendants' carload rates are unreasonable for the transportation of these commodities to all points of destination specified in transcontinental freight bureau eastbound special tariff No. S. R. 1015, I. C. C. No. 902. They further allege that complainants, their traffic, and their lumber-producing locality in California are subjected to unjust discrimination.

tion and to undue and unreasonable prejudice and disadvantage, and that certain competitors, their traffic, and the localities in which they operate are given undue and unreasonable preference and advantage, in that defendants accord to such competitors operating in Oregon and Washington, in the "inland empire" and in Mexico, respectively, on shipments to common points of destination, rates relatively much lower than those exacted from complainants, and transit facilities which are not accorded to complainants. The inland empire is described in the record as the territory in Washington, eastern Oregon, northern Idaho, and western Montana, lying between the Rocky and the Cascade mountains. A reference to the diagram following will show the territory of origin involved.

Several associations of lumber manufacturers intervened to protect the interests of members operating in the northwest. Others intervened who were the complainants in a separate proceeding then pending before us and since decided in *Anson, Gilkey & Hurd Co. v. S. P. Co.*, 33 I. C. C., 332. Their intervention was in support of their claim that any findings to be made in this proceeding should be restricted to lumber as distinguished from the articles manufactured by them from lumber and involved in that separate proceeding.

Complainants manufacture and deal in pine lumber and do not assail the lumber rates in so far as applicable to other kinds of wood. Pine lumber is also produced in the competing localities mentioned above, and, while the varieties differ to some extent, is substantially the same so far as commercial requirements are concerned. It is used principally in the manufacture of sash, doors, blinds, interior finish, and box shooks, and for all kinds of millwork.

By the tariff in question, as amended, defendants group designated points of origin in California, Nevada, Oregon, and Utah, into six groups, called the Coast, Truckee, Hawley, Blinzig, Virgilia, and Keddie groups, respectively. Most of the complainants operate in the Coast group, the largest of the six, comprising many points in California and a few in Oregon. The Truckee group includes points on the line of the Southern Pacific Company in Utah, Nevada, and central California; the Hawley group, points on the Western Pacific Railway also in Utah, Nevada, and California; and the three remaining groups, other points on the line of the latter carrier in California.

To common points of destination on and east of the Missouri River the carload rates on lumber from the Coast and Blinzig groups are substantially the same, from the Virgilia group generally 2 cents less, and from the other groups generally 3 cents less. All rates are stated herein in cents per 100 pounds on carload shipments. From the Truckee group rates apply "via Southern Pacific Com-

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Coast group.—Southern Pacific: Stations on direct line from Potholes, Cal., to Ekt. Oreg., and points on line and branches west thereof. Also stations San Francisco to Colfax, Cal., inclusive. Atchafalpa, Topeka & Santa Fe: Stations on line from National City, Cal., to Barstow, Cal., and from Ingelett, Cal., to San Francisco, inclusive, including branches. Western Pacific: Points San Francisco to Las Vegas, Cal., inclusive.

Blinsig group.—Western Pacific: Points Blinsig, Cal., to Rich, Cal., inclusive.

Virgilia group.—Western Pacific: Twain, Cal., and Virgilia, Cal., only.

Keddie group.—Western Pacific: Points Keddie, Cal., to Blairden, Cal., inclusive.

Truckee group.—Southern Pacific: Points Truckee, Cal., to Umbria Junction, Utah, inclusive.

Hawley group.—Western Pacific: Points Hawley, Cal., to Lago, Utah, inclusive.

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pany, via Ogden, Utah, only," and from the Hawley group "via Western Pacific Railway, via Salt Lake City, Utah, only."

Four distinct issues are presented:

1. Are the rates charged complainants reasonable?
2. Are northwestern competitors unduly preferred in rates?
3. Are Mexican competitors so preferred?
4. Are competitors unduly preferred in transit facilities?

For convenience, these issues will be considered in the order stated.

1. The evidence under this head was directed almost entirely to the reasonableness of the rates charged complainants to points of destination on the Missouri River and east thereof, as compared with the corresponding rates from competing localities to the same points. Defendants insist that this issue was abandoned by complainants, and instance the testimony of two witnesses for complainants who, in response to inquiries, stated that the issue of discrimination would cover the whole complaint. It is unnecessary to pass upon any technical objections. There is nothing in this record to show that the rates are unreasonable. The fact that they are rates from the Pacific to the Atlantic seaboard on a low-grade commodity is in itself significant.

2. The lumber-producing points in the northwest are, for rate-making purposes, divided into groups. We have here to consider only those in the north coast group in western Washington and Oregon, and those in the inland empire. As a general rule the latter take rates on lumber to common points of destination in the east which are a differential of 3 cents under those from the north coast group. This differential conforms to our findings in *Potlatch Lumber Co. v. N. P. Ry. Co.*, 14 I. C. C., 41, 49, one of the *Northwest Lumber cases*, 14 I. C. C., 1, 23, 41, 51, and 61. To avoid confusion with the California-Oregon coast group points, those in western Washington and northern Oregon are commonly known as the north coast points.

The principal lumber product of the north coast is fir. Owing to the greater strength of this wood it may be put to uses for which pine is not suitable. Complainants state, and the record is clear, that the only substantial competition encountered by them in marketing their products is from the inland empire and northern Mexico, and is restricted to doors.

The evidence under this head is, however, devoted principally to various rate and other comparisons as against shipments from the north coast points, and not from the inland empire. While, as stated above, rates on lumber from the northwest bear a general relationship, there are certain differences in the weights of fir and pine lumber, density of traffic, minimum carload weights, and car-mile earnings, all in favor of fir lumber, which lessen the helpfulness of the com-

parisons of record. Moreover, the comparisons of distance and ton-mile revenue in this record are based upon average group distances, or distances from selected points in the respective groups, and many of the distances thus computed are objected to as not fairly representative.

The rates specifically attacked by complainants are among those shown in the following table of rates on lumber, and are there contrasted with those from the north coast to the same destinations:

To—	From north coast points.	From California coast points.	To—	From north coast points.	From California coast points.
St. Paul, Minn.....	45	50	New York, N. Y.....	75	78
Kansas City, Mo.....	50	50	Syracuse, N. Y.....	74	77
Omaha, Nebr.....	50	50	Philadelphia, Pa.....	73	76
St. Louis, Mo.....	55	55	Baltimore, Md.....	72	75
Chicago, Ill.....	55	60	Boston, Mass.....	75	78

Complainants ask that their rates to Kansas City and Omaha be made 45 cents; to Chicago, 55 cents; to the Atlantic seaboard, the same as from the north coast; and to other destinations a differential of 3 cents over those from the inland empire in all cases where the present California rates exceed that differential.

The intervening northwest producers are chiefly interested in this feature of the case. They are neutral as to whether or not the California rates are unreasonable *per se*, but deny that California rates are relatively much higher than those from Oregon and Washington. They assert that if either locality has an advantage it is California.

Lumber rates from points in the northwest to destinations in the east and elsewhere were before us in the *Northwest Lumber cases, supra*. We there approved rates of 45 and 50 cents from north coast points to St. Paul and Omaha, respectively. The carriers filed bills to enjoin enforcement of our order and the case finally reached the Supreme Court of the United States for determination of "the single question as to whether, in making the 45-cent rate, the Commission acted within its power," the carriers claiming that if 50 cents was a reasonable rate to Omaha for a distance of 1,800 miles, a rate of 45 cents to St. Paul for a distance of 2,052 miles was not only unreasonable but unjust. The Supreme Court, in sustaining the validity of our order, stated that it does not follow, as a matter of law, that rates should be the same for the same distance over two different roads, and further said that the per mile ratio of rates can not be regarded as a necessary standard. *Int. Com. Comm. v. Union Pacific R. R.*, 222 U. S., 541, at 551, 552.

The 45-cent rate from north coast points to St. Paul is thus based on our order in the *Northwest Lumber cases, supra*. The local rate

on lumber from St. Paul to Chicago, a distance of 410 miles, was 10 cents at the time of the hearing herein. This rate, compelled by water competition from Duluth, Minn., and Superior, Wis., to Chicago, naturally resulted in the low rate of 55 cents from north coast points to Chicago. The local rate of 10 cents from St. Paul to Chicago has since been advanced to 11 cents, and by tariffs filed to become effective on various dates during July, 1915, a further advance to 12 cents is proposed. The operation of these tariffs is now under suspension in Investigation and Suspension Docket No. 675. The rate from north coast points to Chicago is still 55 cents, as a proportional rate of 10 cents is now applicable on lumber from St. Paul to Chicago when from north coast points.

From the California points the short line to Chicago is via Omaha. The rate to Omaha is 50 cents and the local rate from Omaha to Chicago, a distance of 492 miles, is 16 cents, an aggregate of 66 cents as against the through rate of 60 cents. From California points to Chicago there is also a proportional rate of 57.5 cents when for beyond.

In *Anson, Gilkey & Hurd Co. v. S. P. Co.*, *supra*, we said, at page 342:

The lumber rates from the north coast were the subject of a thorough investigation by the Commission in *Oregon & Washington Lumber Mfrs. Assn. v. U. P. R. R. Co.*, 14 I. C. C., 1. These rates have also been considered in recent decisions: *Betcher Lumber Co. v. C., M. & St. P. Ry. Co.*, 26 I. C. C., 335; *Wheeler Lumber Bridge & Supply Co. v. A., T. & S. F. Ry. Co.*, 30 I. C. C., 343. No new facts have been called to our attention in the present case which justify a revision of the lumber rates here attacked.

Briefly, the record shows that to many points of destination the rates from the north coast and from California points are the same, while to others the differences are sometimes in favor of the former and sometimes of the latter. Certain mixtures may be shipped upon these rates, and certain rights of diversion are accorded. Those in connection with the California rates are more liberal than those incident to transportation from the north coast.

It appears that the carriers serving the different lumber-producing regions endeavor to maintain such rates as will enable the shippers on their respective lines to reach the eastern markets on a substantial equality with their competitors. The result is that these rates are to a great extent interrelated. The carriers serving the competing points of origin are not the same, and some of the rate-making carriers from the northwest, notably the Great Northern and the Northern Pacific, are not parties to this proceeding.

In effect we are here asked to compel the California lines and their connections to cancel rates which are not shown to be unreason-

able, and to establish in lieu thereof rates equal to, or a fixed differential over, rates which the California lines do not control, established by carriers not parties to this proceeding with a few exceptions. In *Rates on Gasoline Engines and Windmills*, 29 I. C. C., 643, 644, we said:

This conclusion is not affected by the fact, as shown by protestants, that the carriers serving the north coast terminals have not proposed to take the same action with respect to this mixture as have the carriers to the California terminals. The direct and rate-making routes to the north coast terminals are via the lines of carriers which have indirect routes to the California terminals or do not reach those terminals at all, and we can not hold the carriers to the California terminals to be directly responsible for any discrimination resulting by reason of lower rates in effect via the lines to the north coast.

The record discloses no sufficient basis for a finding of undue preference of north coast shippers.

3. The Mexican lumber referred to in this report is shipped by the Madera Company, Limited, from Madera, Mexico, a point 275 miles south of El Paso, Texas. It moves to El Paso via the Mexico Northwestern and the El Paso Southern, its subsidiary. The Madera Company is controlled by the Mexico Northwestern.

The through rates on lumber and forest products from Madera to the various points of destination involved are the combinations of a rate of 23 cents to El Paso and proportional rates applicable on Mexican lumber thence to points on the Missouri and Mississippi rivers, among others; to which are added, on traffic to points east of the Mississippi, the rates of the eastern connecting lines. The rate of 23 cents to El Paso is published and filed by the El Paso Southern, and is based upon the local rate of the Mexico Northwestern to the Rio Grande River, equivalent to 20 cents in United States coin, plus a bridge charge of 3 cents by the El Paso Southern. The Atchison, Topeka & Santa Fe Railway affords the one exception to this method of publication, an exception in form rather than in substance, in that it participates in joint through rates from Madera to various points reached by it, the rates from Madera to common destinations, and the revenues derived by the participating carriers, being the same as via the other lines.

From El Paso the short-line route to most of the destinations concerned is via the El Paso & Southwestern to Santa Rosa, N. Mex. and thence via the Rock Island system. The proportional rates were first established in 1910 by the former line with the consent of the Rock Island, and rates from El Paso via other routes were later reduced to correspond with those so established.

It is unnecessary to review in detail the evidence submitted and the contentions of the parties upon this feature of the complaint. The carriers attempt to minimize the importance of the movement

of lumber from Mexico, but, without determining the extent of competition from Mexican producing points or speculating upon potential production in Mexico, it is clear that there is a substantial movement from northern Mexico through El Paso to markets on and east of the Missouri River; that this lumber is similar to that produced in California and in the inland empire; and that it is sold and used in competition therewith.

The record shows that there is an available route through El Paso, with joint rates applicable thereto, for the movement of California lumber, except from the Truckee and Hawley groups, to the destinations under consideration. It further appears that some of the defendants participate in the transportation of the lumber from El Paso to these common points of destination, whether such lumber originates in California or at Madera. Their compensation for the haul from El Paso is, for the former, in the form of divisions of the joint rates; while for the latter it is, except for the Atchison, Topeka & Santa Fe, in the form of proportional rates.

In seeking to show that the rates accorded lumber moving from Mexico through El Paso to points in the United States are relatively much lower than those on lumber moving from California to the same destinations, the complainants relied largely upon the following table:

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The rates from El Paso given in this table are proportional rates applying only on lumber originating in Mexico. Defendants urge that these rates are not fairly comparable and suggest a comparison between these proportional rates and the divisions received by the carriers east of El Paso out of the joint through rates on California lumber to the same destinations. Such a comparison indicates that, while there is no consistent relation maintained between the two, the proportional rates are in general fully as high as the divisions.

The Commission has repeatedly held that it can not equalize commercial or industrial conditions. And it is, of course, without power to pass upon the reasonableness of the rate from Madera to El Paso.

The protection of American manufacturers and producers from foreign competition is not within the powers of this Commission. In *A., T. & S. F. Ry. v. Interstate C. Commission*, 190 Fed., 591, the court said, page 594:

As early as 1896 * * * the Supreme Court said in *T. & P. Ry. Co. v. I. C. C.*, 162 U. S., 197, at page 221:

"Our reading of the act does not disclose any purpose or intention on the part of Congress to thereby reenforce the provisions of the tariff laws. These laws differ wholly in their objects from the law to regulate commerce. Their main purpose is to collect revenues with which to meet the expenditures of the government, and those of their provisions whereby Congress seeks to so adjust rates as to protect American manufacturers and producers from competition by foreign low-priced labor operate equally in all parts of the country."

Whatever, therefore, the rights of the carrier may be to give reduced rates for the purpose of fostering a new or an established industry or for granting to it a higher measure of protection against foreign competition than Congress through the revenue laws has given it, no such power can lawfully be exercised by the Commission.

We must hold that complainants have failed to sustain their allegations of unjust discrimination and undue and unreasonable prejudice and disadvantage against them in favor of Mexican competitors.

4. But little evidence was adduced regarding the issue as to transit facilities, although the subject is commented upon in the briefs. We find that as to this issue also complainants have not sustained their charges.

The complaint will be dismissed.

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INVESTIGATION AND SUSPENSION DOCKET No. 692.
CLASS RATES FROM MICHIGAN AND WISCONSIN POINTS.

Submitted December 17, 1915. Decided January 24, 1916.

Modification of the proposed readjustment of joint through class rates from points in Wisconsin and Michigan on or near Green Bay, Lake Michigan, to points in central freight association and eastern trunk line territories found justified to the extent outlined in the report.

C. C. Wright and *R. H. Widdicombe* for Chicago & North Western Railway Company.

O. W. Dynes and *C. A. Lahey* for Chicago, Milwaukee & St. Paul Railway Company.

J. B. Call for Kewaunee, Green Bay & Western Railroad Company.

A. H. Greenly for central freight association territory lines.

Borders, Walter & Burchmore and *E. S. Hall* for protestants.

REPORT OF THE COMMISSION.

MEYER, *Commissioner*:

A proposed readjustment of the joint through class rates from points situated on or near the Green Bay shore in Wisconsin and Michigan to points in central freight association and eastern trunk line territories is the subject of investigation in this proceeding. The readjustment contemplated some increases in the rates, and upon protests entered by various shippers and commercial organizations located at the points of origin involved the tariff carrying the proposed rates, which was published to become effective August 10, 1915, was suspended to December 8, 1915, and later resuspended to June 8, 1916.

The most important of the 19 points from which the present and proposed rates apply are Green Bay, Marinette, Oconto, and Peshtigo, Wis., and Menominee, Mich. Dependent on the originating carrier, the rates involved apply via Kewaunee, Manitowoc, or Milwaukee, Wis., thence across Lake Michigan by car ferry to lower Michigan lake ports, and thence by rail to destination. Some of the commodities moving on class rates to the territories referred to are baby carriages, go-carts, paper and paper articles, saddlery and harness, excelsior and excelsior pads, box shooks, and bottle carriers.

The present rates appear to be in a very chaotic condition. The primary object of the proposed readjustment is to line up the rates

on a more consistent basis, and not to secure increases in revenue. For example, it was pointed out that to a large number of points in Michigan and Ohio the rates on all six classes from the Green Bay shore points are lower than the rates from Manitowoc and Milwaukee. To other destinations the rates from the Green Bay shore points are lower on some classes and higher on other classes than the rates from Manitowoc and Milwaukee. In many instances the discrimination between the destination points is marked. To one destination the rates from Green Bay shore points are higher than to another destination in the same group, and to another point in the same group lower than the rates from Manitowoc and Milwaukee. These inconsistencies, discriminations, and fourth section violations are the result of various revisions in the Manitowoc and Milwaukee rates and of regrouping points in central freight association territory, without corresponding changes in the rates from and grouping of Green Bay shore points. Sporadic attempts by the originating respondents to meet the competition of the Ann Arbor Railroad car ferries from Menominee to certain destinations and not to others also has contributed to the anomalies of the present adjustment. Respondents apparently have decided to withdraw from the competition for business at Menominee since the Ann Arbor Railroad Company proposes no increase in its present rates.

The proposed eastbound rates are constructed in the same manner as the present westbound rates, viz, by the addition of differentials to the Milwaukee or Manitowoc rates. These differentials were stated at the hearing to be 6, 5, 4, 3, 2, and 2 cents on the six classes, respectively, but a check of the proposed eastbound rates from Green Bay shore points against the present eastbound rates from Milwaukee and Manitowoc, and of the present westbound rates to Green Bay shore points against the present westbound rates to Milwaukee and Manitowoc, indicates that these differentials are 6.3, 5.2, 4.2, 3.1, 2.1, and 2.1 cents, respectively. It will be noted that the latter scale of differentials is 5 per cent greater than the first scale. The scale mentioned first was that used in constructing the westbound rates prior to our decision in *The Five Per Cent Case*, 31 I. C. C., 351, and on rehearing, 32 I. C. C., 325, as the westbound rates to Green Bay shore points prior to October 26, 1914, were higher than the westbound rates to Milwaukee and Manitowoc by that scale of differentials. In other words, the joint through rates from points in central freight association and eastern trunk line territories involved herein to Green Bay shore points were increased 5 per cent on that date. This action was contrary to our first decision in *The Five Per Cent Case*, *supra*, which permitted an increase of 5 per cent in intraterritorial rates in central freight association territory only. It was also contrary to

the decision in that case on rehearing, in which, with respect to joint through rates of this character, it was held, at page 331:

Joint rates between official classification territory on the one hand, and southeastern territory, the southwest, and points on or east of the Missouri River on the other, may be increased not to exceed 5 per cent of the division of the rate accruing to the carriers in official classification territory.

On January 4, 1915, a supplemental order was entered in that case permitting certain exceptions to the conclusion quoted above in order to preserve existing differential relationships, but no supplemental order was made permitting the extension of the 5 per cent increase to rates to Green Bay shore points. Nor has application been made for such an order. Under the circumstances respondents should withdraw their present joint through rates to Green Bay shore points and publish in lieu thereof rates no higher than the present joint through rates to Manitowoc or Milwaukee plus the former differentials of 6, 5, 4, 3, 2, and 2 cents on the six classes, respectively. Carriers will be expected to make this readjustment promptly.

In view of what has been said herein regarding the westbound rates, the proposed eastbound rates will be considered as if constructed on the basis of the present rates from Manitowoc or Milwaukee plus differentials of 6, 5, 4, 3, 2, and 2 cents on the six classes, respectively. The western respondents contend that, were it not for the fact that the points involved are situated on and adjacent to Green Bay and therefore open to direct water competition, the rates therefrom to points in central freight association and eastern trunk line territories would be made on the basis of the aggregate local rates to and from Manitowoc or Milwaukee. This appears to be the basis upon which the rates from Appleton, Kaukauna, and other interior points in the same general territory are made. Some idea of the differences between joint through rates made by the addition of the differentials mentioned last and the aggregates of the intermediate local rates to and from the nearest Lake Michigan port via which the through rates apply is given by the following table, which is a comparison of the local rates from the Green Bay shore points to the nearest Lake Michigan port via which the through rates and the differentials referred to apply. Rates in cents per 100 pounds:

74

551

22

22

In addition to the differences in rates shown above it should be stated that the through rates, and therefore the differentials set forth, are governed by the official classification, whereas the local rates up to the ports are governed by the western classification.

Many other comparisons which tend to show that joint through rates constructed by adding the suggested differentials to the present rates from Manitowoc or Milwaukee would be just and reasonable were introduced, but it is not deemed necessary to make any specific reference to them.

Upon consideration of the entire record, it is our finding and conclusion that respondents have justified the proposed increased rates from Green Bay shore points to points in central freight association and eastern trunk line territories to the extent that said rates exceed the present joint through rates from Milwaukee or Manitowoc plus differentials of 6, 5, 4, 3, 2, and 2 cents on the six classes, respectively. An order requiring the cancellation of the suspended tariff will therefore be entered without prejudice to the right of respondents to file a new tariff publishing rates constructed upon the basis indicated above. The reduced rates carried in the suspended schedule should also be reconstructed upon this basis.

ST L. C. C.

No. 7737.
PADUCAH BOARD OF TRADE
v.
CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY ET AL.

Submitted October 30, 1915. Decided January 24, 1916.

1. The class and commodity rates from points in central freight association territory and western trunk line territory to points in western Tennessee made by combination on Paducah, Ky., are unjustly discriminatory to the extent that they exceed the rates constructed by combination on Cairo, Ill.
2. The through rates on grain from points in central freight association territory and western trunk line territory to points in Carolina territory, southeastern territory, and Mississippi Valley territory, with the opportunity of milling in transit or handling at Paducah, are unjustly discriminatory to the extent that they exceed the through rates via Cairo with the opportunity of milling or handling in transit at that point.
3. The evidence of record does not warrant a finding that a uniform bridge arbitrary of 1 cent per 100 pounds on all classes and commodities should be established at the Cairo and Paducah crossings. Findings in previous cases to the effect that the rates through the various crossings should be so constructed as to avoid unjust discrimination, affirmed.

J. V. Norman for complainant.

R. V. Fletcher and *A. P. Humburg* for Illinois Central Railroad Company.

R. Walton Moore, C. J. Rixey, jr., and M. P. Callaway for Illinois Central Railroad Company and Cincinnati, New Orleans & Texas Pacific Railway Company.

F. G. Wright for Texas & Pacific Railway Company; Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company; Natchez & Southern Railway Company; and Morgan's Louisiana & Texas Railroad & Steamship Company.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

In *Paducah Board of Trade v. I. C. R. R. Co.*, 29 I. C. C., 593, the complainant alleged that the rates on potatoes, cabbages, onions, beans, and canned goods from points in central freight association territory and western trunk line territory to Paducah, Ky., were unjust, unreasonable, and unjustly discriminatory to the extent that

they exceeded the rates from the same points of origin to Cairo, Ill.; and that the rates on lumber from Paducah to points in trunk line territory, central freight association territory, and western trunk line territory were similarly open to challenge, as compared with the rates from Cairo to the same destinations. We found that the rates on potatoes, cabbages, onions, beans, and canned goods from the points of origin in question southbound to Paducah should not exceed by more than 1 cent per 100 pounds the rates contemporaneously maintained to Cairo; and that the rates on lumber northbound from Paducah to the points of destination involved should not exceed by more than 1 cent per 100 pounds the rates contemporaneously maintained from Cairo to the same destinations. No order was entered, but the carriers adjusted the rates in conformity with the Commission's findings.

The complaint in the present case recites our findings in the previous case and states that—

The purpose of this complaint is to have the principles announced in the above case applied to all classes and commodities moving in or out of the two cities.

The complaint also contains the following specific allegations:

(1) That while the rates on potatoes, onions, cabbages, beans, and canned goods to Cairo and Paducah from the north have been satisfactorily adjusted in accordance with the findings of the Commission in the previous case, yet the rates on these commodities to the south from Cairo are the same as from Paducah. In other words while the rates to Paducah from the north are made 1 cent higher than the rates to Cairo, because of the necessity of crossing the Ohio River to reach Paducah, yet on traffic moving from these points to the south the Paducah rates are extended to Cairo, the carriers absorbing the bridge toll in making the rates from Cairo.

(2) That on all classes and on all commodities other than those above named Paducah is charged a bridge toll of 2 cents per 100 pounds on traffic moving in either direction, while the bridge toll is disregarded in making the rates to and from Cairo; that this method of constructing the rates subjects Paducah to undue prejudice and unjust discrimination; and that the charge of 2 cents per 100 pounds for crossing the Ohio River is unreasonable and unjustly discriminatory to the extent that it exceeds 1 cent per 100 pounds.

(3) That defendants permit grain to be shipped to Cairo from the north, and rehandled or milled at that point, and reshipped to destination at the through rate from point of origin to destination, while if grain is rehandled or milled at Paducah a charge of 1 cent per 100 pounds is made in addition to the through rate, to the undue prejudice and disadvantage of Paducah.

Although the complaint attacks the rates to all points in Carolina territory, southeastern territory, and Mississippi Valley territory, witnesses for the complainant testified that the Paducah jobbers compete with Cairo jobbers only in western Kentucky and western Tennessee, and that they are not interested in the rates to other parts of the south, except the rates on grain and grain products.

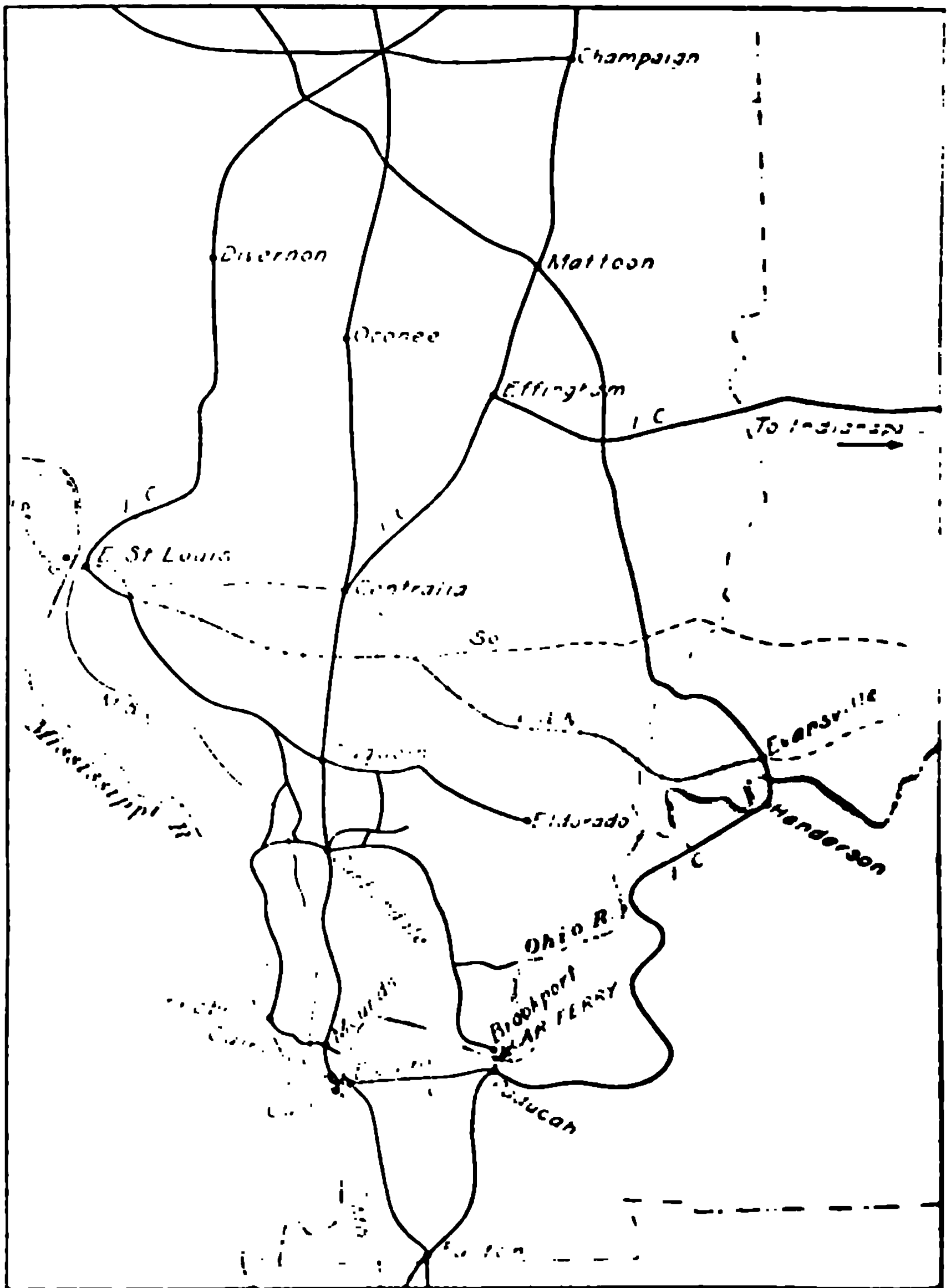
THE CLASS AND COMMODITY RATE ADJUSTMENT.

The rates on the various classes and on nearly all commodities from the north to Paducah are generally 2 cents per 100 pounds higher than the rates to Cairo, while the class and commodity rates to the south are the same from Cairo as from Paducah. At both Paducah and Cairo there are jobbers who receive merchandise from the north and distribute it in the south, especially in Kentucky and Tennessee. The present adjustment, therefore, gives the Cairo jobbers an advantage of 2 cents per 100 pounds on the in and out movement.

Paducah is situated on the south bank of the Ohio River 42 miles east of Cairo. Cairo is at the extreme southern end of Illinois near the confluence of the Mississippi and the Ohio rivers. The population of Paducah is approximately 25,000, while that of Cairo is about 17,000. Neither city is on the main line of the Illinois Central Railroad, which serves both points, but Paducah is on the line which extends from Fulton, Ky., to Louisville, Ky., and also on the line extending from East Cairo, Ky., to Louisville. The relative position of the two points is shown on the map following.

From Carbondale, Ill., which is located on the main line of the Illinois Central Railroad 57 miles north of Cairo, a branch line extends to Brookport, Ill., from which the Illinois Central operates a car ferry to Paducah, on the opposite bank of the Ohio River. The distance from Carbondale to Paducah via Brookport is 76 miles.

Through traffic from the north and the northwest destined to points in the south is assembled into new trains, with new crews, at Centralia, Ill., 56 miles north of Carbondale. At Mounds, Ill., 11 miles north of Cairo, the trains are reassembled, picking up any cars which may have come from St. Louis, Mo. From Mounds the trains proceed southward, crossing the Ohio River at a point about halfway between Cairo and Cairo Junction, which is 4 miles north of Cairo. The through freight trains from the north do not pass through Cairo, nor do they, after leaving Centralia, contain cars consigned to Cairo. When the trains from the north reach Centralia cars consigned to Cairo are taken out and placed in a separate train, one local freight train daily being operated between Centralia and Cairo. The Cairo train runs on the main line from Centralia as far south as



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Cairo Junction, where it is switched to a branch line which passes under the main line near the west end of the Cairo bridge, thence into Cairo proper. The small map shows the situation.

Traffic from the north to Paducah is handled in a similar manner. A daily freight train is operated between Mounds, Ill., and Paducah via East Cairo. When the trains from the north are broken up at Mounds such cars as are consigned to Paducah are put into a new

train, with a new crew, and hauled to Paducah, the return trip being made the same day.

It is clear from the above that the methods of operating trains from the north to Cairo and Paducah are substantially the same, and that Cairo, so far as its local traffic is concerned, is not a "main-line point."

The defendants maintain, however, that so far as the branch line between Carbondale and Paducah is concerned Paducah is at a dis-

advantage. The grades are considerably heavier on this branch than on the main line, and all traffic hauled to Paducah by this route must be carried from Brookport to Paducah by the car ferry. An engine and crew must be kept constantly on duty on either side of the river to transfer the cars to and from the ferry, and other expenses incident to the operation of the ferry are emphasized by the defendants. The average number of freight cars per train on the Carbondale-Brookport branch during the year ended April 30, 1913, was 10.8, as compared with 45.3 between Centralia and Mounds. One of the defendants' exhibits shows that the traffic density on the line between Centralia and Mounds was approximately 16 times as great as on the Carbondale-Brookport branch.

Although the defendants have laid considerable stress on these statistics, the showing has comparatively little bearing on the situation before us, because traffic from the north to Paducah is not usually hauled via Brookport, the special train service between Mounds and Paducah, described above, being commonly used for local Paducah traffic. At least 85 per cent of all traffic between Paducah and the north is now handled via Mounds and East Cairo. Furthermore, the class and commodity rates from points in the north to Brookport are in many instances the same as the rates to Cairo, although Brookport is at the southern end of the branch line whose operating conditions are said to be so unfavorable.

The carriers' second defense is that to equalize the rates to Paducah and Cairo would probably result in a disturbance of the rate adjustments at all the Ohio River crossings. Prior to September 1, 1881, the class rates from the Ohio River crossings to the southeast were not uniform. On November 15, 1879, the first-class rate from Cincinnati, Ohio, to Atlanta, Ga., for example, was \$1.30, while from Louisville, Ky., the rate was \$1.10, and from Jeffersonville, Ind., \$1.12. In 1880, after the completion of the Cincinnati Southern Railroad, now the Cincinnati, New Orleans & Texas Pacific Railway, which "was built by the city of Cincinnati for the express purpose of securing for Cincinnati the Louisville rates to and from equidistant southern territory," the first-class rate from Cincinnati to Atlanta was reduced from \$1.30 to \$1.10, the rate from Louisville. In the next year a controversy arose between the lines north of the Ohio River and the southern carriers as to which should have the right to fix the through rates from the northern territory to points in the south. As a result of this controversy it was decided to construct all the rates by combination on the Ohio River crossings. The carriers operating south of the river, in order to equalize the through rates, established the same rates from all the crossings to points in what is known as Atlanta territory. The relationship between the rates at the various

crossings during the different periods is shown in the following table, taken from one of defendants' exhibits:

To Atlanta, Ga., from—	First-class rates effective—			
	Nov. 15, 1879.	Apr. 8, 1880.	Sept. 1, 1881.	At present.
	Cents.	Cents.	Cents.	Cents.
Cincinnati, Ohio.....	130	110	95	98
Jeffersonville, Ind.....	113	113	95	98
Evansville, Ind.....	113	113	95	98
Cairo, Ill.....	113	113	95	98
Louisville, Ky.....	110	110	95	98
Henderson, Ky.....	110	110	95	98
East Cairo, Ky.....	110	110	95	98

It is not to be understood, however, that the same rates apply from all of the Ohio River crossings to all points in the southeast. To what is known as "Montgomery subterritory," for example, the rates from Cincinnati are higher than the rates from Louisville and the other crossings, the differential on first class being 10 cents. In order to make the through rates via Cincinnati as low as the through rates via Louisville and the other crossings proportional rates are published from Chicago and Milwaukee territories to all north bank points, applicable on traffic to the southeast, including both Montgomery and Atlanta territories.

The proportional rates from Chicago and Milwaukee territories to Paducah are higher by 2 cents per 100 pounds than the proportional class rates to Cairo. The proportional class rates from Chicago to Cairo and Paducah in cents per 100 pounds are as follows:

From Chicago, Ill., to—	1	2	3	4	5	6
Cairo, Ill.....	35	30	22	15	13	10
Paducah, Ky.....	37	32	24	17	15	12

The desire of the southern carriers to maintain the present adjustment of rates at the Ohio River crossings seems to be due chiefly to their fear that if a readjustment should occur it would result in a reduction in some of the rates. They maintain that it is practically impossible for them to increase the rates from north bank points and that any equalization of the rates through opposite crossings would have to be effected by reducing the rates from the south bank points. They show, for example, that Cairo is the only crossing served by the Mobile & Ohio Railroad and that it is interested in keeping the rates through Cairo as low as the rates through any of the other crossings. It probably would be unwilling, therefore, to increase the rates from Cairo to points in the south. If the Illinois Central Railroad should attempt to eliminate the discrimination as between

Cairo and Paducah by increasing the rates from Cairo, it is said that the only result would be that all traffic from Cairo to competitive points in the south would be diverted to the Mobile & Ohio. Similarly, the Cincinnati, New Orleans & Texas Pacific Railway serves only the Cincinnati crossing. If the rates from south bank points are made uniformly less than the rates from the north bank points the result will be to make the rates from Cincinnati higher than the rates from Louisville, although the Cincinnati Southern Railroad is said to have been built for the express purpose of making the rates from Cincinnati at least as low as the rates from Louisville.

We are told in the present case, as we have been told many times before, that the rates between the Ohio River crossings and Mississippi Valley territory were originally made by the boat lines and that the railroads, constructed in a later period, found it necessary to adopt in large measure the rate adjustment which had been created by the water carriers. One feature of that adjustment was the application of a common rate from the north bank and south bank Ohio River crossings, the boat lines finding it no more expensive to stop on one side of the river than on the other. The rail carriers, it is said, found it necessary to meet the rates made by the boats, and consequently the rates from Cairo to Mississippi Valley points were made the same as the rates from Paducah.

While this historical explanation of the identity of rates at opposite crossings is not without interest, its exact application to the facts of the present case is not clear. There is no definite testimony to the effect that the boat lines are extensively engaged in transporting from Cairo and Paducah to Mississippi Valley territory and southeastern territory the commodities distributed by the Cairo and Paducah jobbers. In *Rates on Lumber from Southern Points*, 34 I. C. C., 652, the Mississippi Valley lines, including the Illinois Central Railroad, submitted for our approval an adjustment of lumber rates in which the rates to north bank Ohio River crossings were in all instances higher than the rates to opposite south bank points. In this adjustment, which we generally approved, it is obvious that the carriers departed from the custom of maintaining opposite crossings on the same basis, apparently ignoring the fact that the rates to and from the crossings "were and are now controlled by this river competition." The defendants further show that the competition between carriers serving different distributing centers led them in some instances to disregard the bridge tolls, and that the same kind of competition still influences the adjustment of rates from the crossings.

In a number of recent cases we have had occasion to consider the rate adjustments at the Ohio River crossings. In several of them it has been shown that the rates are so constructed as to favor one point

to the prejudice and disadvantage of a point on the opposite side of the river. We have uniformly held in these cases that the rates must be so made as to avoid discrimination; that if a bridge toll is charged at one crossing it should be charged at all crossings; that if a bridge toll is absorbed at one crossing it should be absorbed at all crossings; and that a transit privilege granted at one point on the Ohio River should also be accorded under substantially similar conditions at a competing point. *Manufacturers and Merchants' Asso. v. A. & A. R. R. Co.*, 24 I. C. C., 331; *Same v. Same*, 25 I. C. C., 116; *Norman Lumber Co. v. L. & N. R. R. Co.*, 22 I. C. C., 239; *Same v. Same*, 29 I. C. C., 565; *Paducah Board of Trade v. I. C. R. R. Co.*, 29 I. C. C., 583; *Same v. Same*, 29 I. C. C., 593; *Metropolis Commercial Club v. I. C. R. R. Co.*, 30 I. C. C., 40; *Rates on Lumber from Southern Points*, 34 I. C. C., 652; and *Henderson Commercial Club v. I. C. R. R. Co.*, 36 I. C. C., 20.

The case last cited was decided July 26, 1915. The facts in that case were so similar to those in the present case that a summary of them will be helpful. Evansville, Ind., is situated on the north bank of the Ohio River. Henderson, Ky., is on the opposite side of the river and slightly west of Evansville, the distance by rail between the two points being 12 miles. The complainant showed that through class rates between Henderson and points north of Evansville were made by full combination on Evansville, making the rates from Henderson to points in the north from 3 cents per 100 pounds, sixth class, to 7½ cents per 100 pounds, first class, higher than the rates from Evansville. The rates from Evansville to points south of Henderson, however, were not more than 3 cents higher than the rates from Henderson to the same points, and in many instances they were no higher. The defendants contended that the bridge and railroad between Henderson and Evansville were so expensive as to justify the higher rates from Henderson to the north, and that any change in the Evansville-Henderson adjustment would disturb the general rate adjustment at all the Ohio River crossings. We said, at pages 24 and 26:

The real cause of complaint is the alleged discrimination against Henderson. Assuming that the carrier's service between Evansville and Henderson is expensive and that the local rates in question are reasonable, considered by themselves, we fail to find in the record a satisfactory explanation of the practice of greatly abating those charges in constructing the rates between Evansville and the Henderson territory. * * * Whatever charge is assessed by the carriers for their service between Evansville and Henderson, whether designated as a bridge toll or otherwise, should be applied uniformly in both directions in the construction of through rates on similar classes or commodities.

The Illinois Central Railroad, which assumed almost the whole burden of the defense, maintains that the rates to the crossings from the north must be considered as part of one adjustment and

the rates from the crossings to points in the south as part of another adjustment. As if for the purpose of emphasizing this contention, two briefs have been filed by the Illinois Central Railroad, one dealing principally with the adjustment north of the river, and the other, filed jointly by the Illinois Central and the Cincinnati, New Orleans & Texas Pacific, discussing the adjustment south of the river. The record clearly shows, however, that it is necessary to view the inbound and outbound rates as a related whole. The Illinois Central Railroad serves a considerable portion of the northern territory from which both Cairo and Paducah draw a large part of their traffic, and it extends through both Cairo and Paducah into the very heart of the territory in which the jobbers of both cities are distributing their merchandise. In view of these facts the through rates from points north of the river to points south of the river via Cairo and Paducah should be considered in their entirety, at least so far as the Illinois Central Railroad is concerned, and the fact that the territory of origin is separated from the territory of destination by the Ohio River should not be accepted as a justification for perpetuating an unjust discrimination.

The evidence of record confirms our previous finding that Cairo and Paducah are so similarly situated that the rates through Paducah should not exceed the rates through Cairo. Points in the territory immediately north of Cairo as far as Carbondale are so much nearer to Cairo than to Paducah that higher rates from those points to Paducah may be warranted.

We are of opinion and find that the class and commodity rates from points in central freight association territory, including points in Illinois north of Carbondale, and western trunk line territory via Paducah to points in Tennessee on and west of the line of the Illinois Central Railroad extending from Fulton, Ky., through Corinth, Miss., are and for the future will be unjustly discriminatory to the extent that they exceed the through rates contemporaneously maintained via Cairo. Since the Illinois Central Railroad is the only carrier which serves both Cairo and Paducah from the north and from the south, and since it is chiefly responsible for the present adjustment, an appropriate order will be entered against that carrier.

We are unable to find on the present record, however, that the present difference of 2 cents per 100 pounds between the rates from the north to Paducah and Cairo on the various classes and on the commodities other than those mentioned above is excessive. In some instances the Ohio River bridges are owned by separately incorporated companies, and the rail carriers are obliged to pay more than 2 cents per 100 pounds as a bridge toll. It is true that we have approved a spread of 1 cent per 100 pounds on lumber

and on certain other commodities, but we are unable, upon the evidence before us, to find that the same arbitrary should apply on all classes and commodities. In the previous cases in which we have considered the Ohio River adjustment we have usually left it to the carriers to decide whether the discrimination which was found to exist should be eliminated by imposing uniform bridge charges in both directions or by absorbing them in both directions. We shall pursue the same policy in the present case.

RESHIPPING AND MILLING-IN-TRANSIT RATES.

At both Cairo and Paducah there are jobbers who purchase grain in central freight association and western trunk line territories and reship it to destinations in Carolina territory, southeastern territory, and Mississippi Valley territory. At both places there are also millers who obtain grain from the north, mill it in transit, and forward the product to stations in the same consuming territories. In many instances the rates are so constructed as to give the Cairo jobbers and millers an advantage of 1 cent per 100 pounds on the combined in and out movement over their competitors at Paducah. It will be necessary to discuss some of these situations in detail.

RESHIPPING AND MILLING-IN-TRANSIT RATES TO THE SOUTHEAST.

Grain originating at stations on the Illinois Central Railroad in Minnesota, South Dakota, or at Omaha, Nebr., from beyond, or at stations on the line extending from Effingham, Ill., to Indianapolis, Ind., or at stations on the line from Mattoon, Ill., to Evansville, Ind., or on the branch which extends from Carbondale, Ill., to Paducah, may be shipped to Paducah, and from there reshipped, or its products reshipped, to stations in the southeast, the rates ultimately paid by the jobbers or millers at Paducah being the same as the rates paid by their competitors at Cairo. Joint through rates are not generally published from points in the north to points in the southeast, but they are made by combination on Cairo or Memphis, Tenn. The inbound rates to Paducah are higher by 2 cents per 100 pounds than the rates to Cairo, but the tariffs of the Illinois Central Railroad provide that the rates to Cairo will be protected at Paducah by refund through the freight claim department of that carrier. On grain originating at a number of points on the Illinois Central Railroad in Iowa and milled in transit at Paducah or Cairo the Paducah miller was, at the time of the hearing, at a disadvantage of 1 cent per 100 pounds. The defendants admitted at the hearing that it was illogical to refuse to equalize the rates to Cairo and Paducah on grain originating in Iowa, while at the

same time equalizing them when the grain originated west of Omaha and the tariffs were amended, effective November 4, 1915, so as to put the rates on grain from all stations on the Illinois Central Railroad in Iowa to Paducah on the same basis as the rates to Cairo.

The millers and jobbers at Paducah and Cairo obtain a large amount of grain from Illinois points. From most of the stations on the Illinois Central Railroad in Illinois the rates via Paducah to points in the southeast are 1 cent per 100 pounds higher than the rates via Cairo. The intrastate rate on grain to Cairo from Champaign, Ill., a typical point of origin, is 7 cents per 100 pounds. The interstate rate from Champaign to Paducah is 10 cents. When grain originating at Champaign is milled in transit at Paducah and the product reshipped to the southeast the tariffs provide for a refund of 2 cents per 100 pounds out of the through rate. Inasmuch as the rates from Cairo and Paducah to the southeast are invariably the same, and since the rate from Champaign to Paducah is 3 cents higher than the rate from Champaign to Cairo, the refund of 2 cents per 100 pounds still leaves the Paducah millers or jobbers at a disadvantage of 1 cent per 100 pounds.

It appears that prior to 1913 the rates from Illinois points to Paducah were uniformly 2 cents per 100 pounds higher than the intrastate rates to Cairo, so that they were equalized by the refund of 2 cents. In 1910 there was a general readjustment of grain rates in central freight association territory and the rate from certain Illinois points to Paducah was raised from 8 cents to 10 cents per 100 pounds. The general adjustment from Illinois points was approved by this Commission in *Grain Rates in Central Freight Association Territory*, 28 I. C. C., 549, though no specific finding was made therein as to the lawfulness of individual rates. At the same time the carriers attempted to raise the intrastate rates, the proposed rate from Champaign to Cairo being 8 cents, an increase of 1 cent. The proposed increases in the intrastate rates were denied, however, by the Railroad and Warehouse Commission of Illinois. The result is that the present rate from Champaign to Cairo is, as above stated, 3 cents per 100 pounds less than the rate from Champaign to Paducah, and the refund of 2 cents given to the Paducah miller still allows the Cairo miller, as stated above, an advantage of 1 cent per 100 pounds. The defendants appear to admit that the discrimination against Paducah is unjust, but they point out that it would not exist if the Illinois commission had approved the proposed increases in the intrastate rates. The Illinois Central Railroad has appealed from the decision of the state commission, and the matter is now pending in one of the courts of Illinois.

The principal defendant does not deny, however, that it is partly responsible for the advantage which Cairo enjoys on grain received

through the East St. Louis gateway or originating at points located on or south of the line from East St. Louis to Du Quoin, Ill., or on or west of the main line from Centralia to Cairo. Grain originating at these stations, all of which are in southern and southwestern Illinois, may be milled in transit at Cairo and the product forwarded to Carolina territory or southeastern territory at the through grain rate, while the aggregate charge via Paducah is 1 cent per 100 pounds greater. The defendants explain Paducah's disadvantage by referring to the history of the adjustment. A number of years ago the Kansas City, Fort Scott & Memphis Railroad, now a part of the Frisco system, established a rate of 13 cents from Kansas City, Mo., to Memphis, Tenn., to increase the movement of grain through the Memphis gateway. The rate from Omaha to Memphis was made 14 cents. The rate from Memphis to Atlanta being 20 cents, the through rate from Omaha to Atlanta became 34 cents. This was lower than the through rate from Omaha to Atlanta via Cairo. The proportional rate from Omaha to East St. Louis was 8 cents, and the rate from Cairo to Atlanta 24 cents. In order to meet the 34-cent rate via Memphis, the Mobile & Ohio Railroad established a proportional rate of 2 cents per 100 pounds from East St. Louis to Cairo. The Illinois Central Railroad, in order that it might share in the traffic, also established a proportional rate of 2 cents from East St. Louis to Cairo. As the Mobile & Ohio Railroad does not reach Paducah, the Illinois Central Railroad considered it unnecessary to reduce Paducah to the Cairo basis. The Southern Railway and the Louisville & Nashville Railroad, which operate through Evansville, also met the Memphis competition by joining in a proportional rate of 10 cents from Omaha to Evansville.

The Illinois Central contends that the competitive influences which were instrumental in reducing the rates via Cairo and Evansville do not exist at Paducah. Having protected its own interests, as against the competition of the other carriers, by reducing the rate to Cairo, it is unwilling to extend the same rates to other points where the competitive conditions, from its own point of view, do not absolutely require it. It is further contended that the greater distance to Paducah is to be considered, especially since grain which is hauled to Paducah from the west and consigned to points in the south must be hauled in a southwesterly direction from Paducah to Fulton, Ky., a distance of 44 miles, before it reaches the main line. This makes the haul via Paducah 39 miles longer than via Cairo. Our attention is further directed to the fact that the Illinois Central obtains a short haul on grain moving through East St. Louis, while on grain originating in Iowa and Nebraska its hauls are much longer. The distance from East St. Louis to Cairo is approximately 150 miles.

The competition between the Illinois Central Railroad and the Mobile & Ohio, on traffic moving through East St. Louis to Cairo, can not be accepted as a satisfactory explanation of the higher rates to Paducah. As stated above, the proportional rate of 10 cents per 100 pounds from Omaha applies to both Cairo and Evansville. The Illinois Central participates in the 10-cent rate to Cairo, and also on traffic moving through its northern gateways, in the rate of 10 cents to Evansville. As grain from the north moving through Evansville to the south moves through Paducah, the Illinois Central equalizes Paducah with Cairo and Evansville on grain which it hauls from the north. When the grain moves through East St. Louis, however, Paducah is denied equality with Cairo only because the Illinois Central Railroad feels that the rate of 2 cents per 100 pounds, which it receives for its haul from East St. Louis, is lower than it might be if the competition of the Mobile & Ohio did not exist.

To prevent injustice, a comprehensive view must be taken of this matter. The 2-cent proportional rate should not be isolated for separate examination when the hauls involved are long, especially since it is but a small factor of through rates considerably higher. In considering the movement of grain from the great primary markets of the west to competing gateways which are similarly situated, and the forwarding of the grain or its products from those gateways to the southeast, the rate structure should be viewed as a whole. It is fairer, for example, to consider the reasonableness of the 10-cent rate from Omaha to Cairo than to consider the proportion of 2 cents which accrues to the lines south of East St. Louis. The rate of 10 cents is not shown to be unduly low, nor is it contended that the rates from the gateways to points of consumption in the south are too low. The Illinois Central's contention that its haul from East St. Louis to Cairo and Paducah is short overlooks the fact that it may obtain a long haul from those gateways to southern points. In the situation before us the competition between the Illinois Central and the Mobile & Ohio should not be considered without reference to the competition between the two communities, Cairo and Paducah. We have held on several occasions that Cairo and Paducah are river crossings substantially alike, and the competition between the Illinois Central and the Mobile & Ohio, shown to exist in the present proceeding, can not justify the unlike treatment of these two substantially similar trading communities. In this connection it is interesting to note that the rate on grain originating at Omaha and shipped via the Illinois Central to Paducah is the same as the rate to Cairo, while if the same grain is shipped via East St. Louis the Illinois Central charges a higher rate to Paducah than to Cairo.

ST. L. C. C.

RESHIPPING RATES TO MISSISSIPPI VALLEY.

The proportional or reshipping rates from Cairo and Paducah to points in Mississippi Valley territory are the same. On grain originating at stations on the Illinois Central Railroad north of Divernon, Effingham, and Oconee, Ill., shown on the large map preceding, a refund of 2 cents is given out of the inbound rates to Paducah, thus equalizing the rates through both gateways to points in the Mississippi Valley. From stations on the Effingham-Indianapolis branch, the Mattoon-Evansville branch, and all other branches east of the main line except the Eldorado branch, grain may likewise be brought to Paducah and reshipped at the through rate. From stations on and south of the line from East St. Louis to Du Quoin, however, Paducah is at a disadvantage of 1 cent per 100 pounds. There is a small territory in Illinois, south of Divernon, Oconee, and Effingham, from which grain can now be shipped to Paducah and reshipped on the Cairo basis, but the defendants state in their brief that it is their intention to make the rates from this territory via Paducah 1 cent higher than via Cairo.

The explanation which the defendants give for equalizing the rates to Cairo and Paducah from part of this territory, while refusing to equalize them from other sections, is that from the territory north of Divernon, Oconee, and Effingham "grain is handled via Evansville and Henderson and thence to the southeast through Paducah, and Paducah is given the same basis as would obtain through Evansville and Henderson," while from stations south of Effingham, Oconee, and Divernon "the natural route is through Cairo and not through either Paducah, Evansville, or Henderson."

MILLING-IN-TRANSIT RATES TO MISSISSIPPI VALLEY POINTS.

There is only a comparatively small territory of origin north of the Ohio River from which the Paducah millers can ship grain to Paducah and reship the milled products to Mississippi Valley points in competition with Cairo. It may be said generally that the rates on grain from the branches of the Illinois Central Railroad which lie east of the main line from Cairo to Chicago to points in Mississippi Valley territory, with the privilege of milling in transit at Paducah, are the same as the rates via Cairo, while the Paducah millers are at a disadvantage of 1 cent per 100 pounds on grain originating at stations on the main line and branches west of the main line, including the line from Chicago to Omaha with its branches.

The complainant directs our attention to one apparently illogical feature of this adjustment, namely, that the territory of origin from

which the rates via Paducah and Cairo are the same when the point of destination is in the southeast differs materially from the territory of origin from which the rates are equalized when the destination is in Mississippi Valley territory. For example, the Paducah millers may ship grain to Paducah from Omaha, mill it in transit at Paducah, and forward the product to the southeast on the same basis as their Cairo competitors, but if the same grain is milled at Paducah and forwarded to Mississippi Valley territory the Paducah millers are assessed 1 cent per 100 pounds more than the millers at Cairo. The explanation which the defendants make of this situation is that the gateway competition referred to above is responsible for the equalization of the rates to the southeast, but does not affect the rates to Mississippi Valley territory.

In this respect, also, the present case is similar to the *Henderson* case. In that case it was shown that the defendants provided in their tariffs for rehandling grain at Louisville, Ky., while declining to make a similar tariff provision for rehandling grain at Henderson. The result was that grain dealers at Henderson desiring to rehandle southern Illinois grain to be shipped to Virginia cities were required to pay rates made by combination on Henderson, while their Louisville competitors were accorded transit at the through rates without extra charge. It further appeared that the carriers comprising the route via Henderson permitted grain to be milled or malted in transit at Henderson on the same terms as at Louisville; but refused to permit the rehandling of grain at Henderson on terms as favorable as those accorded to the Louisville dealers. In that case, as in the present case, it was contended by the defendants that competitive conditions at the favored point were responsible for the more favorable rate adjustment there. We cited a number of cases in which the Commission has alluded to the importance of granting transit at all points on a through route at which transit may be used, so as to prevent undue preference and advantage to terminal and rate-breaking points; and we entered an order requiring the defendants to establish and maintain the same provisions for transit of grain at Henderson under the through rates from Illinois points to the Virginia cities as are contemporaneously maintained at Louisville.

We are of opinion and find that the refusal of the defendants to permit the milling or handling of grain in transit at Paducah, under the through rates from points in central freight association territory, including points in Illinois north of Carbondale, and western trunk line territory, to points in Kentucky on and east of the line of the Illinois Central Railroad extending from Paducah to Fulton, Ky., and to points in southeastern territory and Mississippi Valley territory, and to points in the state of Tennessee, upon the same

terms and conditions as are concurrently provided for the milling or handling of grain in transit at Cairo, Ill., under the through rates from the same points of origin to the same points of destination, results in unjust discrimination against Paducah.

An appropriate order will be entered.

DANIELS, *Commissioner*, dissenting:

Although concurring in the general disposition of this case, I am unable to agree with the conclusion that the through rates on grain from points of origin, moving via the East St. Louis gateway to points in Carolina territory, southeastern territory, and Mississippi Valley territory, with the privileges of milling in transit or handling at Paducah, are unjustly discriminatory to the extent that they exceed the through rates via Cairo with the milling or handling in transit privileges at that point. The present 2-cent proportional from East St. Louis to Cairo is the direct result of competitive influences, and should not be taken as the measure of a reasonable rate. For example, the present rate of 34 cents from Omaha via East St. Louis and Cairo to Atlanta was compelled by a 34-cent rate from Omaha to Atlanta through the Memphis gateway. The proportional from Omaha to East St. Louis being 8 cents and the rate from Cairo to Atlanta 24 cents, the Mobile & Ohio put in a 2-cent proportional from East St. Louis to Cairo. The Illinois Central also felt compelled to quote a 2-cent rate for this haul; but as the Mobile & Ohio does not reach Paducah the Illinois Central did not feel itself required to put Paducah upon the Cairo basis. The majority opinion says on page 755:

The Illinois Central contends that the competitive influences which were instrumental in reducing the rates via Cairo and Evansville do not exist at Paducah. Having protected its own interests, as against the competition of the other carriers, by reducing the rate to Cairo, it is unwilling to extend the same rates to other points where the competitive conditions, from its own point of view, do not absolutely require it. It is further contended that the greater distance to Paducah is to be considered, especially since grain which is hauled to Paducah from the west and consigned to points in the south must be hauled in a southwesterly direction from Paducah to Fulton, Ky., a distance of 44 miles, before it reaches the main line. This makes the haul via Paducah 39 miles longer than via Cairo. Our attention is further directed to the fact that the Illinois Central obtains a short haul on grain moving through East St. Louis, while on grain originating in Iowa and Nebraska its hauls are much longer. The distance from East St. Louis to Cairo is approximately 150 miles.

In view of these circumstances, I am constrained to dissent from the finding that the 1-cent higher rate via Paducah is unduly discriminatory. *Ashland Fire Brick Co. v. Sou. Ry. Co.*, 22 I. C. C., 115.

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No. 7738.
PADUCAH BOARD OF TRADE
v.
ABILENE & SOUTHERN RAILWAY COMPANY ET AL

Submitted October 30, 1915. Decided January 20, 1916.

In constructing their class and commodity rates from the territory east of the Mississippi River to points in Arkansas, Oklahoma, Louisiana, and Texas the defendants have placed Paducah, Ky., in "Nashville territory" and Cairo, Ill., in "St. Louis territory," the rates from the former territory being materially higher than the rates from the latter; *Held*, That the present adjustment gives the manufacturers and jobbers located at Cairo an undue advantage over their Paducah competitors. Defendants required to establish class and commodity rates from Paducah to points in the southwest not in excess of those contemporaneously in effect from Cairo to the same points.

J. V. Norman for complainant.

H. G. Herbel and *F. G. Wright* for defendants.

F. M. Ducker for Cairo Association of Commerce, intervener.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

The complainant is a corporation organized for the purpose of promoting the interests of the merchants, manufacturers, and jobbers of Paducah, Ky. In its complaint, filed February 8, 1915, it alleges that the class and commodity rates from Paducah to points in Arkansas, Oklahoma, Louisiana, and Texas are unjustly discriminatory as compared with the rates from Cairo, Ill., to the same destinations. The Cairo Association of Commerce intervened.

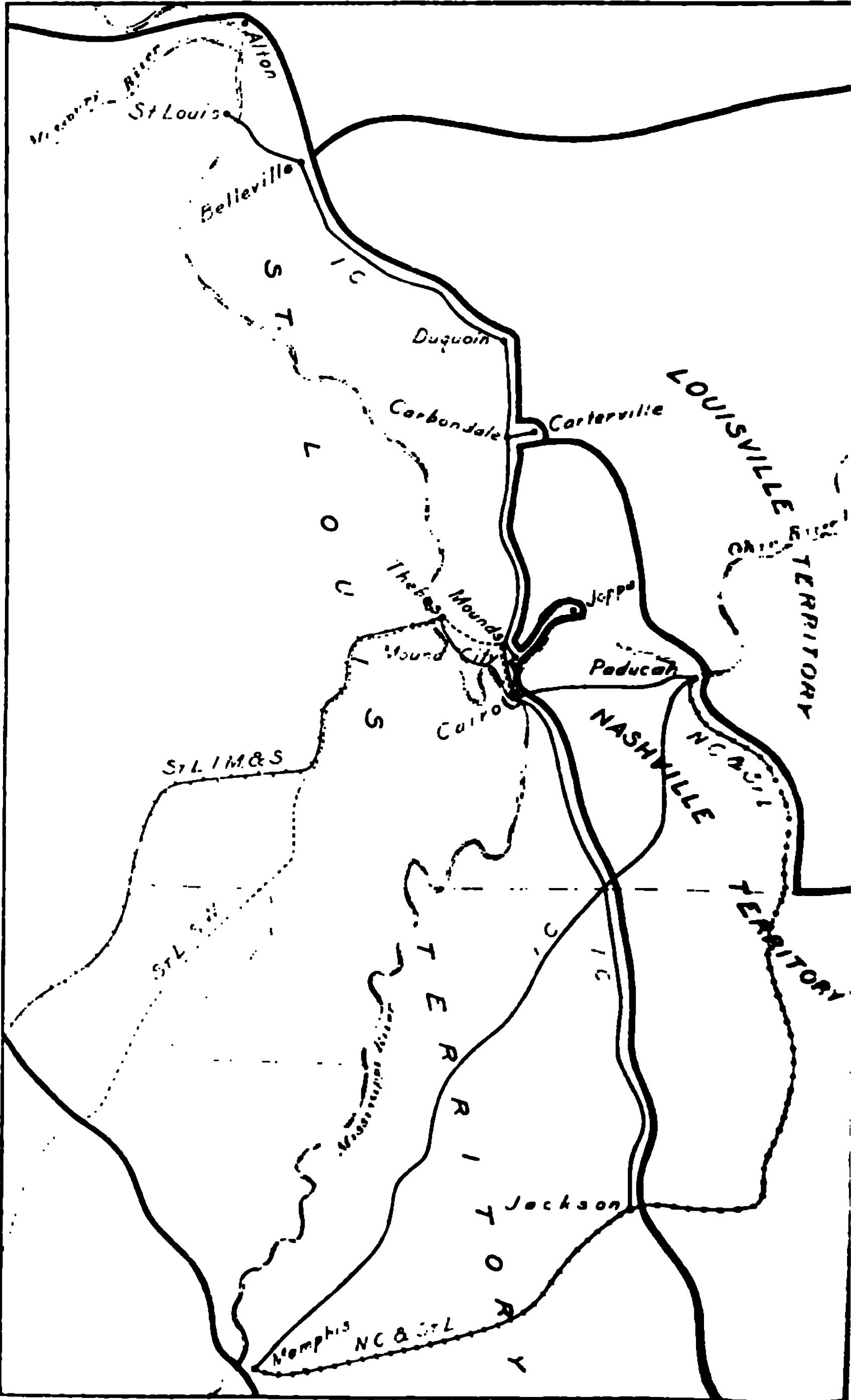
Paducah is situated on the south bank of the Ohio River near the mouth of the Tennessee River and about 40 miles east of Cairo. Its population is approximately 25,000. Manufacturers and jobbers located at Paducah distribute their products in the southern states and the southwestern states, the latter including Arkansas, Oklahoma, Louisiana, and Texas. At Cairo there are manufacturers and jobbers who also dispose of their wares in the south and the southwest, and the competition between the two cities in the distribution of merchandise is severe.

Cairo is located on a narrow strip of land between the Mississippi River and the Ohio River at the extreme southern end of Illinois. Its population is approximately 17,000. The St. Louis, Iron Mountain & Southern Railway and the St. Louis Southwestern Railway

extend from Cairo to a large part of the southwestern territory involved in this proceeding. These two carriers handle their Cairo traffic through Thebes, Ill., which is about 28 miles northwest of Cairo. The Illinois Central also extends from Cairo southward to Memphis, Tenn., which is one of the gateways to the southwestern territory, but it appears that traffic from Cairo is usually handled by the lines operating west of the river. Paducah is reached from the south by the Illinois Central Railroad and the Nashville, Chattanooga & St. Louis Railway. Much of the traffic from Paducah to the southwest is handled through Memphis. The short-line distance from Paducah to Memphis is 165 miles, via the Illinois Central Railroad. The Nashville, Chattanooga & St. Louis Railway also extends from Paducah to Memphis, but its route is 64.6 miles longer than the other route. The Illinois Central Railroad also extends from Paducah to Cairo, and traffic from Paducah to the southwest may be handled via Cairo.

In constructing class and commodity rates to points in Arkansas, Oklahoma, Louisiana, and Texas, the southwestern lines have divided the northern and eastern parts of the country into rate groups, or "defined territories." An exhibit filed by the defendants indicates that the territory east of the Mississippi River is divided into 15 such groups. It is said that these groups were originally constructed for the purpose of establishing joint all-rail rates from the east to the southwest, to permit the rail lines to participate in traffic which otherwise would be carried by water from the Atlantic seaboard to ports on the Gulf of Mexico. The groups with which we are immediately concerned in the present case are the so-called St. Louis territory, Nashville territory, and Louisville territory. The gravamen of the complaint is that the defendants, in constructing these groups, placed Cairo in the St. Louis territory and Paducah in the Nashville territory, the rates from the latter group being higher, and that Paducah is thereby subjected to undue prejudice and disadvantage. The defendants reply that the boundary lines of these groups are naturally and equitably drawn, that Cairo is logically within the St. Louis group while Paducah is not, and that Paducah might logically have been included in the Louisville territory, the rates from which to the southwest are higher than the rates from either of the other groups.

The map following shows the present boundary lines of parts of the three groups. The northeastern boundary of the St. Louis territory is the line of the Illinois Central Railroad which extends from St. Louis, Mo., to Du Quoin, Ill. The eastern boundary, which has been the subject of much discussion, runs just east of the main line of the Illinois Central Railroad from Du Quoin to Carbondale, Ill. From Carbondale it extends eastward for the purpose of including



Carterville, Ill., which is on the branch line of the Illinois Central extending from Carbondale to Brookport, Ill., opposite Paducah. From Carterville the boundary line returns to the main line of the Illinois Central, which it follows as far as Mounds, Ill., where it again turns to the east to include Mound City, Ill., and Joppa, Ill. The latter point is located on the north side of the Ohio River about halfway between Cairo and Paducah, on the Chicago & Eastern Illinois Railroad. South of Mounds the boundary line runs just east of the main line of the Illinois Central Railroad as far as Jackson, Tenn., from which point it follows the Mobile & Ohio Railroad to the Gulf of Mexico. The western boundary of the St. Louis group follows the main line of the Illinois Central Railroad from a point just north of New Orleans, La., to Memphis, where it diverges to the northwest, passing through Springfield and Kansas City, Mo., thence east through Alton and Belleville, Ill.

The boundary lines of the other groups need not be described in detail, except to note that the northern boundary of the Nashville territory follows the Tennessee-Kentucky state line as far west as the Nashville, Chattanooga & St. Louis Railway, which it follows as far north as the Ohio River. South of the Ohio River the eastern boundary of St. Louis territory constitutes the western boundary of Nashville territory.

The class rates from Nashville territory to points in the southwest are higher than the rates from St. Louis territory by the following differentials:

Class	1	2	3	4	5	A	B	C	D	E
Differential	6	5	4	3	2	3	2	2	2	1

Since Paducah is in Nashville territory and Cairo in St. Louis territory, these differentials represent the advantage in rates which Cairo has over Paducah. The rates from Louisville territory are still higher, the first-class rate from that territory being 12.8 cents higher than the rate from St. Louis.¹ The class rates from St. Louis territory and Nashville territory to Texas common points are shown in the following table:

To Texas common points from—	1	2	3	4	5	A	B	C	D	E
Nashville territory.....	153	130	108	99	77	82	72	60	48	40
St. Louis territory.....	147	125	104	96	75	79	70	58	46	39

¹As a result of our conclusions in *The Five Per Cent Case*, 31 I. C. C., 351, 32 I. C. C., 325, tariffs were filed, effective January 18, 1915, increasing rates in official classification territory. The Louisville territory discussed in this report extends both north and south of the Ohio River. As rates in the territory south of the Ohio were not generally increased the rates from all parts of the Louisville territory are not now uniform. From points in Illinois, for example, the first-class rate to the southwest is 12.8 cents higher than the rate from St. Louis territory, while from many points in Kentucky the first-class rate is 11 cents higher than the corresponding rate from St. Louis territory.

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The record does not show the extent of Cairo's advantage over Paducah with respect to the rates on particular commodities. It was testified, however, that whisky, singletrees, vehicle material wagons, and dry goods are distributed in the southwest from both Cairo and Paducah. The rates on these commodities from both points to typical destinations are shown in the following table:

Rates in cents per 100 pounds on commodities from Cairo, Ill., and Paducah Ky., to Little Rock, Ark., and Texas common points.

	To Little Rock.		To Texas common points.	
	From Cairo.	From Paducah.	From Cairo.	From Paducah.
Wagons, farm, minimum weight 24,000 pounds.....	28	36	78	79
Cotton bales, 5'.....				
Unfinished, any quantity.....	50	64	132	138
Finished (first class, any quantity).....	50	106	147	152
Whisky:				
In glass, any quantity (except as noted).....	135	147	112	113
In wood, any quantity.....	15	47	112	113
Vehicle material, minimum 6,000 pounds (except as noted).....	128	136	78	79
Wagon wood in the rough, minimum 6,000 pounds (except as noted).....	120	125	66	66
Singletrees, minimum 24,000 pounds.....	28	36	78	79

1 Carload, minimum 24,000 pounds.
2 Minimum, 24,000 pounds.
3 Class D, minimum 30,000 pounds.

The distances from Paducah to points in the southwest are approximately the same as the distances from Cairo. The following table shows the distances to representative points from both Cairo and Paducah:

To—	From Cairo via lines west.	From Paducah via Memphis.	To—	From Cairo via lines west.	From Paducah via Memphis.
	Miles.	Miles.		Miles.	Miles.
Fernest City, Ark.....	214	214	Camden, Ark.....	371	371
Brinkley, Ark.....	214	214	Alexandria, La.....	517	517
Little Rock, Ark.....	280	278	Monroe, La.....	620	620
Pine Bluff, Ark.....	312	319	Metairie, Ark.....	526	526

As the Illinois Central Railroad and the Nashville, Chattanooga & St. Louis Railway do not extend west of Memphis it is necessary for them to turn over to the western lines at that point traffic from Paducah consigned to the southwest. The defendants lay emphasis on the fact that this necessitates a two-line haul, while it is possible for a single carrier to haul traffic from Cairo to the southwest. We do not think, however, that this alone justifies higher rates from Paducah than from Cairo, especially since there are many points in the St. Louis territory located on lines which do not reach the southwest. Moreover, it is pardonable to overlook an extra line haul in

dealing with a rate structure which disregards great differences in distance and which was created rather because the interests of the carriers demanded it than because transportation conditions justified it.

A large part of the testimony and the argument deals with the eastern boundary of St. Louis territory. The complainant contends not only that the line was so drawn as to cause unjust discrimination, but that its course was determined without regard to geographical or transportation conditions. The defendants maintain, on the other hand, that the Illinois Central Railroad constitutes a logical eastern boundary for this group, and that such "slight deviations" as occur are "just as logical as the boundary lines of the United States."

The testimony of the defendants' only witness, the general freight agent of the Missouri Pacific-Iron Mountain system, supports the complainant's contentions. He stated that "the logical line for the eastern boundary of St. Louis territory is the Mississippi River," but that the boundary was extended to the main line of the Illinois Central Railroad because of the proximity of its railroad to that of the Iron Mountain in Illinois, and because both carriers participate in the traffic to the southwest.

As shown above, however, even this boundary line was not consistently maintained, Carterville and Joppa, Ill., both of which lie east of the main line, having been embraced in the St. Louis group. While these deviations from the chosen boundary are said in the defendants' brief to be logical, their only witness, who seemed to be fully acquainted with the situation, stated in substance that Joppa and Carterville should not be in St. Louis territory, and that some of the points in southern Illinois east of the main line, which a few years ago were grouped with St. Louis, have since been transferred to the Nashville group. Why the boundary line leaves the Illinois Central at Jackson, Tenn., and follows the Mobile & Ohio from there to the Gulf is not clearly explained of record.

It appears, however, that the St. Louis group has been artificially modified for the purpose of giving Cairo a still greater advantage. While the rates from Cairo to points in the southwest are generally the same as the rates from St. Louis, there is an important territory in central Arkansas to which the rates from Cairo are less than the rates from St. Louis and lower than the rates from most other points in St. Louis territory. The record indicates, rather vaguely, that the lower rates from Cairo resulted from the fact that three carriers run directly to Little Rock from the principal gateways, the St. Louis, Iron Mountain & Southern from St. Louis, the St. Louis Southwestern from Cairo, and the Little Rock & Memphis Railway, now operated by the Chicago, Rock Island &

Pacific Railway, from Memphis. Cairo's advantage at present, so far as the class rates are concerned, is shown in the following table. Little Rock, Ark., being taken as a representative destination:

The defendants maintain that if Paducah should be transferred to the St. Louis group it would be necessary to reduce the rates to the southwest from all stations on the Nashville, Chattanooga & St. Louis Railway south of Paducah. The line of that carrier now constitutes the eastern boundary of a part of the Nashville territory, all stations thereon being in the Nashville group. The defendants show that the line of the Nashville, Chattanooga & St. Louis Railway is so far east of the main line of the Illinois Central Railroad, the present eastern boundary of the St. Louis territory, that an extension of the St. Louis rates to stations on the line of the former carrier would cause a material extension of the St. Louis group, and perhaps lead to a complete disintegration of the Nashville group. We do not feel, however, that the possibility of a further readjustment should preclude the establishment of nondiscriminatory rates from Paducah.

The defendants further maintain that Paducah should properly be placed in the Louisville territory, and in support of their position they show that the boundary of the Nashville territory, after following the Tennessee-Kentucky state line as far west as the line of the Nashville, Chattanooga & St. Louis Railway, suddenly veers to the north, apparently for the very purpose of removing Paducah from the Louisville group and giving it the advantage of the lower rates from Nashville territory. It is clear, however, that this has little bearing on the issue here involved—the relationship between the rates from Cairo and Paducah.

In a number of recent cases we have held that Cairo and Paducah are similarly situated. We have said that the distances to Cairo from points in the southwest on and south of the Memphis-Little Rock line of the Rock Island are substantially the same as the distances to Paducah, and that the rates on lumber to Paducah from the southwest should not be higher than the rates to Cairo. *Paducah Board of Trade v. I. C. R. R. Co.*, 29 I. C. C., 583; *Same v. Same*, 29 I. C. C., 593; *Same v. Same*, 37 I. C. C., 719; *Same v. C., B. & Q. R. R. Co.*, 37 I. C. C., 743.

Upon consideration of all the evidence of record we are of opinion and find that the defendants' class and commodity rates from Paducah to points in Arkansas, Oklahoma, Louisiana, and Texas on and south of the Memphis-Little Rock line of the Rock Island are unjustly discriminatory to the extent that they exceed the rates contemporaneously in effect from Cairo.

The complaint also contains a prayer for the establishment of joint class and commodity rates from the southwest to Paducah, but it appears that most, if not all, of the rates which the complainant desires have been voluntarily established by the defendants since the complaint was filed. There is also an allegation that the rates from Paducah are unreasonable *per se*, but no evidence was introduced to support that allegation, and the record shows that the complainant is interested in an equalization of the rates rather than in the amount of the rates.

An appropriate order will be entered.

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CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED REPORT DURING THE TIME COVERED BY THIS VOLUME, WITH TABLE.

5041. CRUTCHFIELD, WOOLFOLK & CLORE v. F. E. C. Ry. Co. et al. Rates on potatoes, in hampers, from various points in Florida to Chicago, Ill. *A. O. Davies* for complainant. *F. W. Guathmey* for defendants. Dismissed on request of complainant, December 21, 1915.

6436. OLIVER-FINNIE Co. v. St. L. & S. F. R. R. Co. et al. Rate on peanuts from Jonesboro, Ark., to Memphis, Tenn. *G. M. Stephen* for complainant. *T. Bond* for defendants. Dismissed on request of complainant, December 21, 1915.

6542. WOOLWORTH Co. v. ERIE R. R. Co. et al. Rate on brass goods from Arlington, N. J., to Toledo, Ohio. *W. D. Morton* for complainant. No appearances for defendants. Dismissed on request of complainant, January 20, 1916.

6595. ST. PAUL & TACOMA LUMBER Co. v. G., H. & S. A. Ry. Co. et al. Rates on creosote oil in tank cars from Galveston, Texas, to Tacoma, Wash. *G. Winslow* for complainant. *H. E. Still* and *A. W. Hawkins* for defendants. Dismissed on request of complainant, January 11, 1916.

6689. STATE OF SOUTH DAKOTA v. A. & W. Ry. Co. et al. Class and Commodity rates between stations west of Aberdeen and Mobridge, S. Dak., and points on the C. M. & St. P. Ry. in South Dakota. *P. W. Dougherty*, *W. G. Smith*, and *D. L. Kelley* for complainants. *O. W. Dynes* and *J. G. Love* for defendants. Dismissed on request of complainant, December 22, 1915.

6780. FOSTER LUMBER Co. v. CLATSKANIE TRANSPORTATION Co. et al. Rates on forest products from points on the O.-W. R. R. & Nav. Co. to Drummond, Tetonia, and Driggs, Idaho. *G. F. Morris* for complainant. *H. A. Scandrett* and *L. T. Wilcox* for defendants. Complaint satisfied. Dismissed, January 29, 1916.

7156. ROCKPORT DRAIN TILE Co. v. S. Ry. Co. Rates and switching charges on drain tile from Rockport, Ind., to Louisville, Ky. *C. C. Ashcraft* for complainant. *E. R. Oliver* for defendant. Dismissed on request of complainant, December 21, 1915.

7728. MOORE & Co. v. WESTERN UNION TELEGRAPH Co. Refusal of defendant to furnish New York Stock Exchange quotations and incidental ticker service. *J. Stadtfeld* and *J. H. Reich* for complainant. *H. S. Robbins*, *E. Schreiner*, and *A. J. Loeffler* for defendant. Dismissed on request of complainant, February 7, 1916.

7862. CLARKSON COAL & DOCK Co. v. M. St. P. & S. Ste. M. Ry. Co. Demurrage on coal held at Duluth, Minn., due to windstorm. No appearance for complainant. *A. H. Lessor* and *J. O. Klapp* for defendants. Dismissed on request of complainant, December 21, 1915.

7871. BEWLEY MILLS et al. v. A., T. & S. F. Ry. Co. et al. Certain allowances for shrinkage of grain when adjustment is made for losses in transit moving between points in Missouri, Kansas, Nebraska, Oklahoma, Arkansas and other states. *B. D. Pelton* for complainant. *C. S. Burg*, *H. G. Herbel*, *F. G. Wright*, *Thompson & Barwise*, *T. J. Freeman*, *G. Thompson*, *T. Bond*, *A. Miller*, *F. H. Wood*, *Baker*, *Botts*, *Parker & Garwood*, *R. Dunlap*, *T. J. Norton*, and *W. F. Dickinson* for defendants. Dismissed on request of complainant, December 21, 1915.

8044. HALL MFG. Co. v. C., M. & St. P. Ry. Co. et al. Rate on agricultural implements and parts and display stands from Monticello, Iowa, to points in Washington,

Oregon and California. *F. W. Knoche* for complainant. *R. C. Fyfe* and *R. C. Sanders* for defendants. Dismissed on request of complainant, December 21, 1915.

8053. PALMER & SEMANS LUMBER CO. et al. v. B. & O. R. R. Co. et al. Rate on lumber from Ursina Junction, Pa., to Lowville, N. Y. *G. D. Howell* for complainant. *A. T. C. Gordon* and *N. D. Chapin* for defendants. Dismissed on request of complainant, December 21, 1915.

8060. WEINHARD BREWERY v. O.-W. R. R. & Nav. Co. et al. Rates on refrigerators or ice boxes and beer pumps from Cleveland, Ohio, to Portland, Oreg. *W. C. McCulloch* for complainant. *A. C. Spencer*, *O. C. Spencer*, and *H. C. Bust* for defendants. Dismissed on request of complainant, January 11, 1916.

8067. PALMER & SEMANS LUMBER CO. et al. v. B. & O. R. R. Co. et al. Rate on lumber from Ursina Junction, Pa., to various points in New York and New England. *G. D. Howell* for complainant. *A. T. C. Gordon* for defendants. Dismissed on request of complainant, December 21, 1915.

8091. UNION PORTLAND CEMENT CO. v. C., M. & St. P. Ry. Co. et al. Rate on cast-iron plate for stone crusher from West Allis, Wis., to Devils Slide, Wis. *G. M. Stephen* for complainant. *O. W. Dynes*, *N. H. Loomis*, and *H. A. Saunders* for defendants. Dismissed on request of complainant, December 21, 1915.

8156. MURPHY CO. v. C., B. & Q. R. R. Co. et al. Rates on printing presses from Red Oak, Iowa, to North Newark, N. J. *G. Wrightman* for complainant. *R. B. Scott*, *D. L. Gray*, *T. H. Burgess*, and *M. B. Pierce* for defendants. Dismissed on request of complainant, December 21, 1915.

8177. NATIONAL LEAGUE OF COMMISSION MERCHANTS OF THE U. S. v. I. C. R. R. Co. et al. Rate on butter, eggs and poultry from points in Illinois to Philadelphia, Pa. *R. S. French* for complainant. *Glennon*, *Cary*, *Walker & Howe*, *A. F. Hamburg*, *R. V. Fletcher*, *H. D. Palmer*, *W. F. Kinter* and *O. E. Butterfield* for defendants. Dismissed on request of complainant, December 21, 1915.

8190. TARKIO CHAMPION FEED CO. v. M. P. Ry. Co. et al. Rates on masses stock feed from Kansas City, Mo., to Chickasha, Okla. *E. T. Gervais* for complainant. *R. Dunlap*, *T. J. Norton*, *H. G. Herbel*, *F. G. Wright*, and *A. Miller* for defendants. Dismissed on request of complainant, December 21, 1915.

8200. CHATTANOOGA SEWER PIPE & FIRE BRICK CO. v. A. G. S. R. R. Co. et al. Rates on wall coping from Chattanooga, Tenn., to points in Alabama, Mississippi and Louisiana and to Pensacola, Fla., and Helena, Ark. *B. R. Shepherd* for complainant. *W. A. Colston*, *W. A. Northcutt*, *A. P. Humburg*, and *R. V. Fletcher* for defendants. Dismissed on request of complainant, December 21, 1915.

8212. RUNDALL et al. v. C. & N. W. Ry. Co. et al. Rates on stock cattle from Omaha and South Omaha, Nebr., Sioux City, Iowa, Chicago, Ill., and St. Paul, Minn., to points in South Dakota east of the Missouri River, and on fat cattle and sheep from points in South Dakota to Omaha and South Omaha, Sioux City, Chicago and St. Paul. *O. E. Sweet*, *P. W. Dougherty*, and *H. Kinkle* for complainants, and interveners. *O. W. Dynes*, *J. F. Feenerty*, *W. H. Bremner*, *F. M. Miner*, *J. B. Stearns*, *C. C. Wright*, *R. H. Widdicombe* and *W. F. Dickinson* for defendants. Dismissed without prejudice on request of complainants, December 23, 1915.

8263. COAL OPERATORS' TRAFFIC BUREAU OF St. Louis, Mo. v. C., B. & Q. R. R. Co. et al. Rates on bituminous coal from mines in the Belleville Group to points in Missouri, Iowa, Wisconsin, Nebraska, and Illinois on the C., B. & Q. R. R. *R. W. Boyington* for complainant. *W. A. Northcutt*, *D. M. Goodwyn*, and *C. B. Satter* for defendants. Dismissed on request of complainant, December 21, 1915.

8267. PERRY OATS CO. v. C., B. & Q. R. R. Co. et al. Rate on rice and premiums from Rock Island, Iowa, to Arkansas City, Kans. *G. Wrightman* for complainant. *C. J. Boyington*, *F. L. Mott*, *O. E. Sweet*, *E. Mott* and *R. B. Scott* for defendants. Dismissed on request of complainant, December 21, 1915.

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8284. *BISHOP CO. v. N. Y., N. H. & H. R. R. Co.* Rate on ice from Meriden, Conn., to points in Connecticut, Massachusetts and New York. *E. L. Ewing* for complainant. No appearances for defendant. Dismissed on request of complainant, December 21, 1915.

8330. *CONNERSVILLE COMMERCIAL CLUB OF CONNERSVILLE, IND. v. C., H. & D. Ry. Co. et al.* Interchange of traffic within Connersville switching limits. *C. S. Roots*, and *Wiles & Springer* for complainant. *J. B. Cockrum*, and *M. R. Waite* for defendants. Dismissed on request of complainant, December 21, 1915.

8332. *FAISON v. S. A. L. Ry. et al.* Refusal of defendant to switch cars of coal from tracks of the Norfolk & Western to complainant's yard located at Petersburg, Va. No appearances for complainant. *L. E. Chalenor* for defendants. Dismissed on request of complainant, December 21, 1915.

8337. *WARD LUMBER CO. v. Y. & M. V. R. R. Co. et al.* Rates on lumber from Mississippi points to various destinations. *J. H. Townsend* for complainant. *A. H. Lossow*, *E. Burton*, *J. J. Koch*, *L. E. Hinkle*, *C. C. Wright*, *R. H. Widdicombe*, *O. W. Dynes*, *C. E. Dewey*, *W. H. Bremner*, *F. H. Miner*, *N. H. Loomis*, *H. A. Scandrett*, *R. W. Moore*, *C. S. Wight*, *W. C. Coleman*, *A. P. Humburg*, *R. V. Fletcher*, *E. S. Ballard*, *O. E. Butterfield*, and *R. B. Scott* for defendants. Dismissed on request of complainant, January 10, 1916.

8468. *MCLAUGHLIN, GORMLEY, KING CO. v. A. C. L. R. R. Co. et al.* Rates on worm seed from Wilmington, N. C., to Minneapolis, Minn. *T. A. McGrath* for complainant. *A. P. Humburg*, *R. V. Fletcher*, *A. H. Lossow*, *J. B. Sheean*, *C. C. Wright*, *R. H. Widdicombe*, *E. D. Hotchkiss*, *O. W. Dynes*, *R. B. Scott*, *J. J. Koch*, *L. E. Hinkle*, *W. H. Bremner*, *F. M. Miner*, *R. W. Moore*, *T. J. Hackney*, *D. L. Gray*, *T. H. Burgess*, and *M. B. Pierce* for defendants. Dismissed on request of complainant, December 21, 1915.

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- Adams, Mass., to Philadelphia, Pa. Writing paper, 586.
- Agua Prieta, Mex., from Piedras Negras, Mex., via Eagle Pass, Tex., and reconsigned to El Paso, Tex. Sugar, 573.
- Akron, Ohio, to Denver, Colo. Cotton duck, 617.
- Alabama from Estill Springs and Henry's Sandcut, Tenn. Gravel and sand, 602.
- Alabama to Louisville, Ky., Evansville, Ind., and Cincinnati, Ohio. Hardwood lumber and logs, 507.
- Alabama to various destinations. Yellow-pine lumber, 345.
- Albany, N. Y., from Koshkonong-Brandsville district. Peaches, 89.
- Alcolu, S. C. Demurrage on private empty box cars, 620.
- Alexandria, La., from Paducah, Ky. Class and commodity rates, 760.
- Alexandria, La., from Quincy, Ill. Iron and steel lumber wagons, 671.
- Alvarado, Cal. Switching charges, 81.
- Anniston, Ala., to El Segundo, Cal. Cast-iron pipe and fittings, 75.
- Appalachia district, Va., to Spartanburg, S. C. Bituminous coal, 652.
- Arizona from San Pedro, Cal. Lumber and timber, 234.
- Arkansas to eastern cities, and points in Canada. Lumber, 212.
- Arkansas to eastern destinations. Peaches, 89.
- Arkansas to Milwaukee, Wis., and other points. Lumber, 198.
- Arkansas to Oklahoma. Harness, saddlery and saddlery hardware, 726.
- Arkansas from Paducah, Ky. Class and commodity rates, 760.
- Arkansas to Paducah, Ky. Logs and lumber, 719.
- Arkansas to Sioux City, Iowa. Yellow-pine lumber, 353.
- Armory, Mass., to San Francisco, San Diego and Los Angeles, Cal. Motor cycles, 703.
- Ashley, Pa., to Elizabethport and Port Johnston, N. J. Anthracite coal, 460.
- Ashtabula Harbor, Ohio, from Beaco, Pa. Coal, 240.
- Atlanta, Ga., from Council Bluffs and other points in Iowa, Kansas, Missouri and Nebraska. Apples, 297.
- Atlanta-Knoxville territory to Pine Bluff, Ark., via Memphis, Tenn. Through routes and joint rates, 218.
- Atlantic ports from California and Oregon. Lumber and forest products, 730.
- Atlantic ports to C. F. A. territory. Ferromanganese, 374.
- Atlantic ports from C. F. A. territory, Wisconsin, Iowa, Missouri and Kentucky, for export. Grain, grain products and by-products, 190.
- Atlantic ports from Koshkonong-Brandsville district. Peaches, 89.
- Atlantic ports from Louisiana and Arkansas. Lumber, 212.
- Atlantic seaboard territory from California and Oregon. Lumber and forest products, 730.
- Atlantic seaboard territory from Koshkonong-Brandsville district. Peaches, 89.
- Auburn, R. I., from Clearfield district, Pa. Coal, 650.
- Aurora, Ill., to San Francisco, San Diego and Los Angeles, Cal. Motor cycles, 703.

- Baldwin, La., to milling points, reshipped to various destinations. **Lumber, 73**
- Baltimore, Md., from California and Oregon. **Lumber and forest products, 730**
- Baltimore, Md., to C. F. A. territory. **Ferromanganese, 374.**
- Baltimore, Md., from C. F. A. territory, Wisconsin, Iowa. **Missouri and Kentucky for export. Grain, grain products and by-products, 190.**
- Baltimore, Md., from Koshkonong-Brandsville district. **Peaches, 89.**
- Baltimore, Md., from Louisiana and Arkansas. **Lumber, 212.**
- Baltimore, Md., from and to Washington, D. C. **Commutation fares, 268.**
- Bayou Sale, La., to milling points, reshipped to various destinations. **Lumber, 73**
- Bear, Del., from Monocacy, Pa. **Road stone, 577.**
- Beatrice, Nebr., from Buffalo, Kans. **Brick, 712.**
- Beaudette, Minn., to Vincennes, Ind. **Lumber, 583.**
- Beaumont, Tex., to New Orleans, La., for export. **Lumber, 238.**
- Bedford, N. Y., from Swedesboro, N. J. **Glass bottles, 714.**
- Bellingham, Wash., from St. Paul, Minn. **Building and crushed marble, 517.**
- Besco, Pa., to Ashtabula Harbor, Ohio, and other lake ports in Ohio. **Coal, 240**
- Bessemer, Ala., to El Segundo, Cal. **Cast-iron pipe and fittings, 75.**
- Bessemer, Ala., to McRae, Ga. **Slag, 394.**
- Big Sandy fields, Ky., to Kentucky. **Coal, 194.**
- Birmingham, Ala., from Council Bluffs and other points in Iowa, Kansas, Missouri and Nebraska. **Apples, 297.**
- Birmingham-Chattanooga territory to Pine Bluff, Ark., via Memphis. **Through routes and joint rates, 218.**
- Bisbee, Ariz., from San Pedro, Cal. **Lumber and timber, 234.**
- Bismarek, N. Dak., from Council Bluffs and other points in Iowa, Kansas, Missouri and Nebraska. **Apples, 297.**
- Bismarek, N. Dak., from St. Paul, Minn. **Building marble and stone, 512.**
- Black River landings (Arkansas) to interstate destinations. **Joint rates on lumber, 244.**
- Black Rock, Ark., to interstate destinations. **Joint rates on lumber, 244.**
- Blue Island, Ill., from New Lisbon, Wis. **Pickles, 403.**
- Boerobol, Wis., from Couderay, Wis. **Lumber, 611.**
- Boston, Mass., from California and Oregon. **Lumber and forest products, 730.**
- Boston, Mass., from Koshkonong-Brandsville district. **Peaches, 89.**
- Boston, Mass., from Louisiana and Arkansas. **Lumber, 212.**
- Boyd, Ala., to Chattanooga, Tenn. **Logs, 520.**
- Brownsville, Tenn., to Ohio River and points north of, and points east of Mississippi River. **Cottonseed oil, meal, hulls and cake, and compressed cotton linters, 503.**
- Buffalo, Kans., to Beatrice, Nebr. **Brick, 712.**
- Buffalo-Pittsburgh line, points east of, from Louisiana and Arkansas. **Lumber, 212.**
- Burlington, Wis., to Chicago, Ill. **Crushed stone, gravel, sand and grout, 583.**
- California to Missouri River and points east of. **Lumber and forest products, 730.**
- California from territory between Denver and Atlantic seaboard. **Buckwheat and corn flour, 364.**
- California to various states. **Tin cans and other commodities, 360.**
- California terminals from territory between Denver and Atlantic seaboard. **Buckwheat and corn flour, 364.**
- Cambridge City, Ind., to Dayton, Ohio. **Logs, 575.**
- Canada from Louisiana and Arkansas. **Lumber, 212.**
- Canada from Manitowish and Kewaunee, Wis., and Ohio and Michigan. **Grain products, 549.**
- Cape Girardeau, Mo., to Raceland, La. **Cement, 538.**

- Carolina territory from C. F. A., and western trunk line territories, milled in transit at Paducah, Ky. Grain, 743.
- Carolina territory from Pocahontas district, W. Va. Bituminous coal, 652.
- Celilo, Oreg., to New York, N. Y. Fresh fish, 544.
- Central America from New Orleans, La. Creosoted lumber, 238.
- Central freight association territory to Atlantic ports for export. Grain, grain products and by-products, 190.
- Central freight association territory from eastern ports. Ferromanganese, 374.
- Central freight association territory from Hopkins, Minn. Grain separators, 92.
- Central freight association territory from Manitowoc, Milwaukee and Kewaunee, Wis., and Chicago, Ill. Grain and grain products, 549.
- Central freight association territory to Oklahoma. Salt, 699.
- Central freight association territory to southeastern, Carolina and Mississippi Valley territories, milled in transit at Paducah, Ky. Grain, 743.
- Central freight association territory to Tennessee, via Paducah, Ky. Class and commodity rates, 743.
- Central freight association territory from Wisconsin and Michigan. Class rates, 739.
- Chattanooga, Tenn., from Boyd, Ala. Logs, 520.
- Chattanooga, Tenn., from Estill Springs and Henry's Sandcut, Tenn. Sand and gravel, 602.
- Chicago, Ill. Switching charges on hogs from Iowa, 378.
- Chicago, Ill., from Arkansas, Missouri, Texas and Louisiana. Lumber, 198.
- Chicago, Ill., to Atlantic ports for export. Grain, grain products and by-products, 190.
- Chicago, Ill., from California and Oregon. Lumber and forest products, 730.
- Chicago, Ill., to C. F. A., and trunk line territories, and Virginia cities. Grain and grain products, 549.
- Chicago, Ill., to Colton, Cal. Wire bag ties, 99.
- Chicago, Ill., from Council Bluffs and other points in Iowa, Kansas, Missouri and Nebraska. Apples, 297.
- Chicago, Ill., from Crozet, Va. Apples, 604.
- Chicago, Ill., from Des Moines, Iowa. Billiard tables and fixtures, 711.
- Chicago, Ill., from Houston, Tex. Scrap iron, 591.
- Chicago, Ill., to Madison, Ind. Fertilizer, 401.
- Chicago, Ill., from New Lisbon, Wis. Pickles, 403.
- Chicago, Ill., from St. Louis, Mo. Railroad ties, 540.
- Chicago, Ill., from St. Paul and Minneapolis, Minn. Green salted hides, 71.
- Chicago, Ill., to San Francisco, San Diego and Los Angeles, Cal. Motor cycles, 703.
- Chicago, Ill., from Vinita, Okla., and points in Kansas. Petroleum tailings, 287.
- Chicago, Ill., from Wisconsin. Crushed stone, gravel, sand and grout, 593.
- Chicago, Ill., from Wisconsin. Ice, 250.
- Chicago district, Ill., from Racine and Ives, Wis. Crushed stone, 593.
- Chicago Heights, Ill., from Paraffin, Cal. Liquid asphaltum, 405.
- Chicago switching district, Ill., from Wisconsin. Ice, 384.
- Chicago territory to Pine Bluff, Ark., via Memphis, Tenn. Through routes and joint rates, 218.
- Chickasha, Okla., from Texas, Arkansas, and Shreveport, La. Harness, saddlery and saddlery hardware, 726.
- Cincinnati, Ohio, from Alabama, Tennessee and Kentucky. Hardwood lumber and logs, 507.
- Cincinnati, Ohio, from Council Bluffs and other points in Iowa, Kansas, Missouri and Nebraska. Apples, 297.
- Clearfield district, Pa., to Providence, Auburn and Olneyville, R. I. Coal, 650.
- Coal Creek district, Tenn., to southeastern territory. Bituminous coal, 652.

- Coffeyville, Kans., to Sioux City, Iowa. Roofing tile, 709.
- Colorado to Kingman and Winslow, Ariz. Flour and corn meal, 669.
- Colorado from Wyoming and Colorado mines. Coal, 430.
- Colorado common points from St. Paul territory. Class rates, 203.
- Colorado mines to Nebraska and Colorado. Coal, 430.
- Colton, Cal., from Waukegan and Chicago, Ill., and Toledo, Ohio. Wire bag ties, 90.
- Columbus, Ohio, from Hopkins, Minn. Grain separators, 92.
- Cooch, Del., from Monocacy, Pa. Road stone, 577.
- Corry, Pa., to Jamestown, Pa. Ice, 625.
- Couderay, Wis., to Boscobel and other Wisconsin points. Lumber, 611.
- Council Bluffs, Iowa, to North and South Dakota, Minnesota, Wisconsin, Ohio, Indiana, Illinois, Kentucky, Tennessee, Georgia and Alabama. Apples, 297.
- Covington, Ohio, from Hopkins, Minn. Grain separators, 92.
- Crockett, Cal. Switching charges, 81.
- Crozet, Va., to Chicago, Ill. Apples, 604.
- Cumberland River landings from and to interstate points. Through routes and joint rates, 463.
- Dallas, Tex., from New Orleans, La. Burlap and burlap bags, 444.
- Dallas, Tex., to Oklahoma. Harness, saddlery and saddlery hardware, 726.
- Dante district, Va., to Spartanburg, S. C. Bituminous coal, 652.
- Dayton, Ohio, from Cambridge City, Ind. Logs, 575.
- Decatur, Ala., to Louisville, Ky., Evansville, Ind., and Cincinnati, Ohio. Hardwood lumber and logs, 507.
- Decatur, Ind., from Ohio and Indiana. Sugar beets, 367.
- Delaware from Monocacy, Pa. Road stone, 577.
- Delaware City, Del., from Monocacy, Pa. Road stone, 577.
- Dell Rapids, S. Dak., to Sioux Falls, S. Dak., originating at Roosevelt, Tenn. Coal, 707.
- Denison, Tex., to Newton, Tex. Steel relaying rails, 615.
- Denver, Colo., from Akron, Ohio. Cotton duck, 617.
- Des Moines, Iowa, to Chicago, Ill. Billiard tables and fixtures, 711.
- Des Moines, Iowa, from Flint, Mich. Scrap steel, 398.
- Des Moines, Iowa, from Indiana Harbor, Ind. Straight iron rods and nuts, 589.
- Des Moines, Iowa, from twin cities and Minnesota Transfer, Minn. Stone, 372.
- Detroit, Mich. Demurrage on lumber, 609.
- Detroit, Mich. Reconsignment of coal, 274.
- Detroit, Mich., to Oklahoma City and other Oklahoma points. Salt, 609.
- Detroit, Mich., to San Francisco, Los Angeles and San Diego, Cal. Motor cycles, 701.
- Duluth, Minn., from Minnesota, North Dakota and South Dakota. Grain, 627.
- Duluth, Minn., to Minnesota, North Dakota, South Dakota and Iowa. Bituminous and anthracite coal, 627.
- Dunbar, W. Va., to Midway, Frankfort, Lexington and Mount Sterling, Ky. Bottles, 389.
- Durant, Okla., from Texas, Arkansas, and Shreveport, La. Harness, saddlery and saddlery hardware, 726.
- Durham, N. C., from Pocahontas district, W. Va. Bituminous coal, 652.
- Eagle Pass, Tex., from Piedra Negra, Mexico, destined to Agua Prieta, Mexico, and reconsigned to El Paso, Tex. Sugar, 573.
- East Chicago, Ind., from Vinita, Okla., and points in Kansas. Petroleum tailings, 287.
- East St. Louis, Ill., to Cincinnati, Ohio. Broom corn, 482.
- East St. Louis, Ill., to Frankfort, Ky. Broom corn, 485.
- East St. Louis, Ill., from Kansas, and Vinita, Okla. Petroleum tailings, 287.

- Eastern cities from Louisiana and Arkansas. Lumber, 212.
 Eastern ports to C. F. A. territory. Ferromanganese, 374.
 Eastern territory to Pine Bluff, Ark., via Memphis, Tenn. Through routes and joint rates, 218.
 Eastern trunk line territory from Wisconsin and Michigan. Class rates, 739.
 El Paso, Tex. Handling charges on cattle, 284.
 El Paso, Tex., from Piedras Negras, Mexico, reconsigned at Eagle Pass, Tex., originally consigned to Agua Prieta, Mexico. Sugar, 573.
 El Segundo, Cal., from Anniston and Bessemer, Ala. Cast-iron pipe and fittings, 75.
 Elgin, Ohio, to Decatur, Ind. Sugar beets, 367.
 Elizabethport, N. J., from Ashley and other points in the Wyoming region, Pa. Anthracite coal, 460.
 Erie, Colo., to Nebraska and Colorado. Coal, 430.
 Erie, Pa., to Pensacola, Fla., reconsigned to Milton, Fla. Locomotive, 376.
 Estill Springs, Tenn., to Huntsville and other Alabama points, and Chattanooga and other Tennessee points. Gravel and sand, 602.
 Evansville, Ind., from Alabama, Tennessee and Kentucky. Hardwood lumber and logs, 507.
 Fargo, N. Dak., from Minnesota. Class rates, 627.
 Farnhurst, Del., from Monocacy, Pa. Road stone, 577.
 Fayette, Fayette county, Ohio, from New Castle, Pa., and other points. Cement, 697.
 Fisherville, Mass. Switching charges on cloth, 547.
 Flavel, Oreg., to and from San Francisco, Cal. Operation of steamboats, 260.
 Flint, Mich., to Des Moines, Iowa. Scrap steel, 398.
 Fort Smith, Ark., to Oklahoma. Harness, saddlery and saddlery hardware, 726.
 Fort Worth, Tex., to Oklahoma. Harness, saddlery and saddlery hardware, 726.
 Frankfort, Ky., from Dunbar, W. Va. Bottles, 389.
 Frankfort, Ky., from East St. Louis, Ill. Broom corn, 485.
 Galesburg, Ill., from mile post 318, near Remer, Minn. Posts, 619.
 Galveston, Tex., from Greenville, Tex. Damaged cotton, 396.
 Galveston, Tex., to Livingston, Mont. Bananas, 101.
 Gary, Ind., from Vinita, Okla., and points in Kansas. Petroleum tailings, 287.
 Gay Mills, Wis., from Couderay, Wis. Lumber, 611.
 Gladstone, Mich., from Manistique, Mich., originating in Pennsylvania and West Virginia. Hard and soft coal, 523.
 Glenmore, Ohio, to Decatur, Ind. Sugar beets, 367.
 Globe, Ariz., from San Pedro, Cal. Lumber and timber, 234.
 Goldsboro, N. C., from Pocahontas district, W. Va. Bituminous coal, 652.
 Grand Rapids, Mich., to upper peninsula of Michigan. Green fruits and vegetables, 489.
 Granite City, Ill., from Vinita, Okla., and points in Kansas. Petroleum tailings, 287.
 Great Bend, Kans., to Kingman and Winslow, Ariz. Flour and corn meal, 669.
 Green Bay, Wis., to C. F. A. and eastern trunk line territories. Class rates, 739.
 Green Bay, Wis., from Council Bluffs and other points in Iowa, Kansas, Missouri and Nebraska. Apples, 297..
 Green Bay shore points to C. F. A. and eastern trunk line territories. Class rates, 739.
 Greensboro, N. C., from Pocahontas district, W. Va. Bituminous coal, 652.
 Greenville, Pa. Fabrication in transit on iron and steel articles, 370.
 Greenville, Tex., to Galveston, Tex. Damaged cotton, 396.
 Gulf ports to Omaha, Nebr. Blackstrap molasses, 363.
 Hanna, Wyo., to Nebraska and Colorado. Coal, 430.
 Harrington, Del., from Monocacy, Pa. Road stone, 577.
 Harriburg, Pa., from Koshkonong-Brandeville district. Peaches, 89.

- Hartford, Conn., from Koshkonong-Brandsville district. Peaches, 89.
- Haynes, Ark., to Indianapolis, Ind. Logs, 579.
- Henry's Sandcut, Tenn., to Huntsville and other Alabama points, and Chattanooga and other Tennessee points. Gravel and sand, 602.
- Hoboken, N. J., from Wyoming region, Pa. Anthracite coal, 457.
- Hobson, Ohio, to Alcolu, S. C. Private empty box cars; demurrage, 620.
- Hopkins, Minn., to Ohio, Kansas and Nebraska. Grain separators, 92.
- Houghton, Mich., from Grand Rapids, Mich. Green fruits and vegetables, 400.
- Houghton, Pa., to New York and New Jersey. Kindling wood, 622.
- Houston, Tex., to Chicago, Ill. Scrap iron, 591.
- Houston, Tex., to New Orleans, La. Packing-house products, 584.
- Hudson River. Ferry rates on, between New York and Jersey City, 103.
- Huntington, W. Va., from Plattenville, La. Cypress shingles, 546.
- Huntsville, Ala., from Estill Springs and Henry's Sandcut, Tenn. Gravel and sand, 602.
- Ida Grove, Iowa, from Milwaukee, Wis. Motorcycles, 542.
- Illinois. Passenger fares, 1.
- Illinois from Kosmosdale, Ky. Cement, 449.
- Illinois-Indiana state line, points west of, from and to New England and trunk territories. Class and commodity rates, 302.
- Indiana to Atlantic ports for export. Grain, grain products and by-products, 19.
- Indiana to Decatur, Ind. Sugar beets, 367.
- Indiana from Kosmosdale, Ky. Cement, 449.
- Indiana Harbor, Ind., to Des Moines, Iowa. Straight iron rods and nuts, 589.
- Indianapolis, Ind., from Council Bluffs and other points in Iowa, Kansas, Minn. and Nebraska. Apples, 297.
- Indianapolis, Ind., from Haynes and McGehees, Ark. Logs, 579.
- Iowa to Atlantic ports for export. Grain, grain products and by-products, 19.
- Iowa to Chicago, Ill. Hogs, 378.
- Iowa from Duluth, Minn., Superior, Wis., and other points at the head of the lake. Bituminous and anthracite coal, 627.
- Iowa to North and South Dakota, Minnesota, Wisconsin, Ohio, Indiana, Illinois, Kentucky, Tennessee, Georgia and Alabama. Apples, 297.
- Iowa from Toluca, Ill. Coal, 230.
- Ives, Wis., to Chicago, Ill., and Chicago district. Crushed stone, 503.
- Jacksonport, Ark., to interstate destinations. Joint rates on lumber, 244.
- Jamestown, N. Y., from Corry, Pa. Ice, 625.
- Jersey City, N. J., from and to New York, N. Y. Ferry rates, 103.
- Kanawha fields, W. Va., to Kentucky. Coal, 194.
- Kansas to East St. Louis, Granite City and Chicago, Ill., East Chicago and Gary, Ind., and Racine and Milwaukee, Wis. Petroleum tailings, 287.
- Kansas from Hopkins, Minn. Grain separators, 92.
- Kansas to Kingman and Winslow, Ariz. Flour and corn meal, 609.
- Kansas to North and South Dakota, Minnesota, Wisconsin, Ohio, Indiana, Illinois, Kentucky, Tennessee, Georgia and Alabama. Apples, 297.
- Kansas City, Mo., from California and Oregon. Lumber and forest products, 73.
- Kansas City, Mo., to Kingman and Winslow, Ariz. Flour and corn meal, 609.
- Kansas City, Mo., from Laverne, Okla. Cattle, 97.
- Kansas City, Mo., from Pawnee, La. Yellow-pine lumber, 400.
- Kemp, Ohio, to Decatur, Ind. Sugar beets, 367.
- Kentucky to Atlantic ports for export. Grain, grain products and by-products, 19.
- Kentucky from Knoxville, Tenn. Class and commodity rates, 671.
- Kentucky to Louisville, Ky., Evansville, Ind., and Cincinnati, Ohio. Hardwood lumber and logs, 507.

- Kentucky from West Virginia mines. Coal, 194.
- Kewaunee, Wis., to C. F. A., trunk line and New England territories, the Virginias and Canada. Grain products, 549.
- Kingman, Ariz., from Kansas City, Mo., Marshall, Minn., and points in Kansas, Nebraska and Colorado. Flour and corn meal, 669.
- Knoxville, Tenn., to Kentucky. Class and commodity rates, 671.
- Koshkonong-Brandsville district, Mo.-Ark., to eastern destinations. Peaches, 89.
- Koosmosdale, Ky., to Illinois, Indiana and Ohio. Cement, 449.
- La Farge, Wis., from Couderay, Wis. Lumber, 611.
- Lake Charles, La., from Quincy, Ill. Iron and steel lumber wagons, 671.
- Lake Michigan to C. F. A. and eastern trunk line territories. Class rates, 739.
- Lake ports in Ohio, from Besco, Pa. Coal, 240.
- Lamar, Colo., to Kingman and Winslow, Ariz. Flour and corn meal, 669.
- Laverne, Okla., to Kansas City, Mo. Cattle, 97.
- Lehigh district, Pa., to Long Island. Cement, 694.
- Lehigh region, Pa., to Perth Amboy, N. J., for reshipment. Anthracite coal, 441.
- Lexington, Ky., from Dunbar, W. Va. Bottles, 389.
- Lima, Ohio, to Decatur, Ind. Sugar beets, 367.
- Little Rock, Ark., to Oklahoma. Harness, saddlery and saddlery hardware, 726.
- Little Rock, Ark., from Paducah, Ky. Class and commodity rates, 760.
- Livingston, Mont., from Galveston, Tex. Bananas, 101.
- Long Island from Nazareth and Lehigh district, Pa., and points in New Jersey. Cement, 694.
- Lorne, Ala., to Richmond, Ky. Lumber, 717.
- Los Angeles, Cal. Switching charges, 81.
- Los Angeles, Cal., from Chicago and Aurora, Ill., Detroit, Mich., Milwaukee, Wis., Wagon Works and Middletown, Ohio, and Armory, Mass. Motorcycles, 703.
- Louisiana to eastern cities and Canada. Lumber, 212.
- Louisiana to Milwaukee, Wis., and other points. Hardwood lumber, 198.
- Louisiana to Omaha, Nebr. Blackstrap molasses, 363.
- Louisiana from Paducah, Ky. Class and commodity rates, 760.
- Louisiana to Paducah, Ky. Logs and lumber, 719.
- Louisiana to Sioux City, Iowa. Yellow-pine lumber, 353.
- Louisville, Ky., from Alabama, Tennessee and Kentucky. Hardwood lumber and logs, 507.
- Louisville, Ky., from Council Bluffs and other points in Iowa, Kansas, Missouri and Nebraska. Apples, 297.
- Louisville, Ky., to Manassas and Nokesville, Va. Brewers' dried grains, 382.
- Louisville, Ky., to and from Shelbyville, Ky., originating in other states. Class and commodity rates, 675.
- Louisville, Ky., from Toledo, Ohio. Rough wagon fellows, 582.
- Louisville territory to Pine Bluff, Ark., via Memphis, Tenn. Through routes and joint rates, 218.
- Luzerne, Pa., to South Amboy and Hoboken, N. J. Anthracite coal, 457.
- Lynchburg, Va., from Pocahontas and New River districts, W. Va. Bituminous coal, 652.
- Lyons, Kans., to Kingman and Winslow, Ariz. Flour and corn meal, 669.
- McAlester, Okla., from Texas, Arkansas, and Shreveport, La. Harness, saddlery, and saddlery hardware, 726.
- McGehee, Ark., to Indianapolis, Ind. Logs, 579.
- McRae, Ga., from Bessemer, Ala. Slag, 394.
- Madison, Ind. Demurrage on fertilizer, 401.
- Manassas, Va., from Louisville, Ky. Brewers' dried grains, 382.

- Manistique, Mich., to Gladstone, Mich., originating in Pennsylvania and West Virginia. Hard and soft coal, 523.
- Manitowoc, Wis., to C. F. A. and trunk line territories, and Virginia cities. Cans and grain products, 549.
- Marinette, Wis., to C. F. A. and eastern trunk line territories. Class rates, 739.
- Marquette, Mich., from Grand Rapids, Mich. Green fruits and vegetables, 489.
- Marshall, Minn., to Kingman and Winslow, Ariz. Flour and corn meal, 669.
- Memphis, Tenn., from Council Bluffs and other points in Iowa, Kansas, Missouri and Nebraska. Apples, 297.
- Memphis, Tenn., from eastern points, destined to Pine Bluff, Ark. Through routes and joint rates, 218.
- Menominee, Mich., to C. F. A. and eastern trunk line territories. Class rates, 739.
- Mexico via Eagle Pass, Tex., to Mexico. Sugar, 573.
- Michigan to C. F. A. and eastern trunk line territories. Class rates, 739.
- Michigan to C. F. A., trunk line and New England territories, the Virginias and Canada. Grain products, 549.
- Michigan to Oklahoma. Salt, 699.
- Michigan to Topeka, Kans. Potatoes, 598.
- Michigan peninsula, upper, from Grand Rapids, Mich. Green fruit and vegetables, 489.
- Middle Atlantic states to and from points west of Illinois-Indiana state line. Cans and commodity rates, 302.
- Middletown, Ohio, to San Francisco, Los Angeles and San Diego, Cal. Motorcycles, 703.
- Midway, Ky., from Dunbar, W. Va. Bottles, 389.
- Mile Post 318, near Remer, Minn., to Minnesota Transfer, Minn., destined to Calumet, Ill. Posts, 619.
- Milton Fla., from Erie, Pa., reconsigned at Pensacola, Fla. Locomotive, 376.
- Milvid, Tex. Switching charges on lumber, 225.
- Milwaukee, Wis., to C. F. A. and trunk line territories, and Virginia cities. Cans and grain products, 549.
- Milwaukee, Wis., to Ida Grove, Iowa. Motorcycles, 542.
- Milwaukee, Wis., from Missouri and Arkansas. Lumber, 198.
- Milwaukee, Wis., from St. Paul and Minneapolis, Minn. Green salted hides, 71.
- Milwaukee, Wis., to San Francisco, Los Angeles and San Diego, Cal. Motorcycles, 703.
- Milwaukee, Wis., from Vinita, Okla., and points in Kansas. Petroleum tankage, 55.
- Milwaukee territory to Pine Bluff, Ark., via Memphis, Tenn. Through routes and joint rates, 218.
- Minneapolis, Minn., to Chicago and Milwaukee. Green salted hides, 71.
- Minneapolis, Minn., to Colorado common points. Class rates, 203.
- Minneapolis, Minn., from Council Bluffs and other points in Iowa, Kansas, Missouri and Nebraska. Apples, 297.
- Minneapolis, Minn., to Des Moines, Iowa. Stone, 372.
- Minneapolis, Minn., to Wisconsin and Winnipeg, Manitoba. Grain separators, 92.
- Minnesota from Duluth, Minn., Superior, Wis. and other points at the head of the lake. Bituminous and anthracite coal, 627.
- Minnesota to Duluth, Minn., Superior, Wis. and other points at the head of the lake. Grain, 627.
- Minnesota to Fargo, N. Dak. and other points. Class rates, 627.
- Minnesota from St. Paul, Minn. Building marble and stone, 512.
- Minnesota from Toluca, Ill. Coal, 230.
- Minnesota to Topeka, Kans. Potatoes, 598.
- Minnesota Transfer, Minn., to Des Moines, Iowa. Stone, 372.

- Minnesota Transfer, Minn., from Mile Post 318, near Remer, Minn., destined to Galesburg, Ill. Posts, 619.
- Mississippi to Sioux City, Iowa. Yellow-pine lumber, 353.
- Mississippi to various destinations. Yellow-pine lumber, 345.
- Mississippi River, points east of, from Brownsville, Tenn. Cottonseed oil, meal, hulls and cake, and compressed cotton linters, 503.
- Mississippi River, points east of, to California terminals and other California points. Buckwheat and corn flour, 364.
- Mississippi Valley territory from C. F. A. and western trunk line territories, milled in transit at Paducah, Ky. Grain, 743.
- Missouri to Atlantic ports for export. Grain, grain products and by-products, 190.
- Missouri to eastern destinations. Peaches, 89.
- Missouri to Milwaukee, Wis. and other points. Lumber, 198.
- Missouri to North and South Dakota, Minnesota, Wisconsin, Ohio, Indiana, Illinois, Kentucky, Tennessee, Georgia and Alabama. Apples, 297.
- Missouri River and points east of, from California and Oregon. Lumber and forest products, 730.
- Missouri River Valley to North and South Dakota, Minnesota, Wisconsin, Ohio, Indiana, Illinois, Kentucky, Tennessee, Georgia and Alabama. Apples, 297.
- Mobile, Ala., to Omaha, Nebr. Blackstrap molasses, 363.
- Monocacy, Pa., to Delaware. Road stone, 577.
- Monroe, La., from Paducah, Ky. Class and commodity rates, 760.
- Mount Sterling, Ky., from Dunbar, W. Va. Bottles, 389.
- Muskogee, Okla., from Texas, Arkansas, and Shreveport, La. Harness, saddlery and saddlery hardware, 726.
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- New Castle, Del., from Monocacy, Pa. Road stone, 577.
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- New England territory to and from middle Atlantic states. Class and commodity rates, 302.
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- Omaha, Nebr., from California and Oregon. Lumber and forest products, 730.
- Omaha, Nebr., from Mobile, Ala., and New Orleans and other Louisiana points. Blackstrap molasses, 363.
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- South Dakota from St. Paul, Minn. Building marble and stone, 512.
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- Texas to New Orleans, La., for export. Lumber, 238.
- Texas to Oklahoma. Harness, saddlery and saddlery hardware, 726.
- Texas from Paducah, Ky. Class and commodity rates, 760.
- Texas to Sioux City, Iowa. Yellow-pine lumber, 353.
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- West Virginia from Manitowoc and Kewauke, Wis., and Ohio and Michigan. Grain products, 549.
- West Virginia mines to Kentucky. Coal, 194.
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- West Virginia mines to southeastern territory. Bituminous coal, 652.
- Western classification territory. Classification nesting rule, 477.
- Western territory. Advance in rates, 114.
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- Winston-Salem, N. C., from Pocahontas district, W. Va. Bituminous coal, 652.
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- Wisconsin from Toluca, Ill. Coal, 230.
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- Youngstown, Ohio, from eastern ports. Ferromanganese, 374.

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(The number in parentheses following citation indicates where paragraph occurs or subject is considered.)

ABANDONMENT OF CLAIM. See **FORMAL COMPLAINT; LIMITATION OF ACTION.**
ABSORPTION.

Definite finding upon contention that nonabsorption of switching charges on shipments received or delivered on industrial tracks served by the belt railway at San Francisco was unjustly discriminatory is unnecessary. *Boardman Co. v. S. P. Co.* 81 (86).

Switching charge at East St. Louis on bauxite ore. 1915 Western Rate Advance Case—Part II, 114 (143).

Increased switching absorptions present no justification for the increased rate to industries on rails of defendants to which most of the ice traffic is consigned; and as a justification for increased charges to industries on connecting lines its application is very narrow. *Eagle Ice Co. v. C., M. & St. P. Ry. Co.* 250 (255).

The aggregate of absorptions reduces revenue accounts of lake lines by many thousands of dollars. If margin of profit is as small as is urged, it may be there is great doubt of wisdom on their part in persisting in reaching out for business at such great expense. *Rates via Rail-and-Lake Routes*, 302 (313, 314).

Extent of absorptions out of ocean-and-rail rates indicates strongly the need of protection of lake routes and their differentials. *Id.* (316).

Defendant ceased to absorb switching charge on hogs to complainant's plant at Chicago; later provided for absorption of \$4 of the charge, leaving \$2 per car to be paid by shipper. Reparation awarded on shipments which moved during time no absorption was provided for. *Omaha Packing Co. v. C., M. & St. P. Ry. Co.* 378 (379, 381).

Arrangement with respect to switching of ice at Chicago discussed. *Hygienic Ice Co. v. C. & N. W. Ry. Co.* 384 (385).

Trunk lines are not obliged to absorb switching charges of common-carrier industrial lines, but Commission may require carriers to remove unjust discrimination. *Chicago, West Pullman & Southern R. R. Co. Case*, 408 (415).

Switching charge proposed by the Ann Arbor R. R. not justified in that refusal to absorb would result in unjust discrimination. *Grain from Manitowoc, Wis.*, 549 (555).

To the extent that the absorption of \$2.50 per car on bituminous coal is in excess of the Chestnut Ridge switching charge of \$2 it is obviously improper; but it is found that \$1 per car is the maximum that should be allowed for switching for the L. & N. E. R. R. *Chestnut Ridge Railway Case*, 558 (561, 562).

While it is proper for the line-haul carrier to absorb the terminal or switching charges of a connecting line it may not absorb its local transportation charges which in effect carry junction point rates on all traffic back to all points on the short line. *Id.* (562).

If a bridge toll is absorbed at one crossing it should be absorbed at all crossings. *Paducah Board of Trade v. C., B. & Q. R. R. Co.* 743 (751).

ACCOUNTS.

Exhibit showing combined investment and income account for seven lake lines. *Appendix. Rates via Rail-and-Lake Routes*, 302 (338).

ACTION AT LAW. See **DAMAGES.**

ADDITIONAL SERVICE.

Decision herein not to be construed as holding that under all circumstances and conditions rail carriers are bound to perform a service upon private spur and industrial tracks without charge in addition to the line-haul rate. *Boardman Co. v. S. P. Co.* 81 (86).

Run-by and setback switching of grain. An additional service for which line-haul carrier may reasonably exact an additional charge. *1915 Western Rate Advance Case*, 114 (160).

ADJUSTMENT OF RATES.

Revised adjustment of rates on lumber and logs from southern points to Ohio River crossings included voluntary elimination of various inconsistencies and discrepancies. A uniformly reasonable readjustment was attempted. *Brown & Sons Lumber Co. v. L. & N. R. R. Co.* 507 (511).

Rates from mines in Virginia, West Virginia, Kentucky, and Tennessee to destinations in the southeast, and relationship of producing fields, reviewed and readjusted. *Bituminous Coal Rates to the Southeast*, 652.

Proposed readjustment of joint class rates from Green Bay shore points to points in central freight association and eastern trunk line territories in order to line up rates on a more consistent basis found justified to extent outlined. *Class Rates from Michigan and Wisconsin Points*, 739.

ADMINISTRATIVE FUNCTION. See **THROUGH ROUTES AND JOINT RATES.**

ADMINISTRATIVE RULING.

Conference rulings Nos. 34, 225, and 324 quoted. *Divisions of Joint Rates on Railway Fuel Coal*, 265, 266.

Rule 77, Tariff Circular 18-A, cited. *Stone to Des Moines, Iowa*, 372 (373); *New Orleans Joint Traffic Bureau v. A. & S. Ry. Co.* 444 (445, 448); *Houma v. P., C., C. & St. L. Ry. Co.* 575.

Rule 14 (f), Tariff Circular 18-A, was not wholly free from an ambiguity, but has since been amended so as to provide that, unless otherwise specified in the order, a tariff must be made effective on statutory notice. *Brown & Sons Lumber Co. v. L. & N. R. R. Co.* 507 (509, 511).

Rule 39, Tariff Circular 19-A, cited. *Taffe v. Am. Exp. Co.* 544 (545).

ADMISSION.

Defendants admitted that rate charged was unreasonable. *Empire Cotton Oil Co. v. A., B. & A. R. R. Co.* 394 (395).

Defendants admit rate charged was unreasonable and are willing to make reparation on basis sought. *Taffe v. Am. Exp. Co.* 544 (545).

Defendant's answer admits that through error of its agent switching charges were assessed and states that defendant is willing to refund charges if it can do so lawfully. *Fisher Mfg. Co. v. N. Y., N. H. & H. R. R. Co.* 547 (548).

Overcharge admitted. *Houma v. P., C., C. & St. L. Ry. Co.* 575.

Admission by complainant that there are no general meat-packing houses in New Orleans that compete with it in marketing packing-house products renders the allegation of discrimination groundless. *Houston Packing Co. v. I. & G. N. R. Ry. Co.* 584 (585).

Defendants admitted on special docket that rate was unreasonable; but answer to formal complaint denied that complainants were entitled to reparation or that rate was unreasonable. *Abel & Roberts v. M. P. Ry. Co.* 712 (713).

ADVANCE IN RATES.

Increased cost of operation and improved quality of service, strengthen proposal to increase passenger fares. *Western Passenger Fares*, 1 (42).

Increases in passenger fares in western territory not justified to extent proposed. *Id.* (45).

ADVANCE IN RATES—Continued.

Increase in charges for 1,000-mile tickets in certain territory, found justified. *Id.* (46).

Increased rates on peaches from Koshkonong-Brandeville district in southern Missouri and northern Arkansas to eastern destinations, which are made by combination on the Mississippi River and supersede present joint rates, justified. Peaches from Missouri Points, 89.

Increased rates for ferriage of vehicles and animals not justified. Commission can not accept view that this is a case where value of service to parties using ferries justifies an increase. New York-Jersey City Ferry Rates, 103 (113).

Increase in rates on agricultural implements to class A basis justified. 1915 Western Rate Advance Case—Part II, 114 (129).

Increased rates on canned goods, justified, provided same do not exceed existing fifth-class rates and do not involve any increase exceeding 1 cent per 100 pounds. *Id.* (130).

Removal of flue lining from list of commodities taking brick rates and application of class E thereon, justified. *Id.* (135).

Increased rates on eggs to Texas not justified. *Id.* (137).

Increased rates on cider and vinegar not justified. No information was furnished as to elements proper for consideration in making rate comparisons. *Id.* (138, 139.)

Increased rates on bauxite to East St. Louis and other points taking same rate and to Memphis, justified. Other proposed rates not justified. *Id.* (146).

Increased less-than-carload rates on boots and shoes and findings, which would increase the spread between the carload and less-than-carload rates, not justified. Carload rates justified except increases in minima. *Id.* (148).

The fact that a readjustment of certain rates which have been in existence for a considerable period will necessitate an increase should not preclude the establishment of the proposed increases if they are reasonable. *Id.* (150).

Increased carload and less-than-carload rates on dried and evaporated fruits, justified. *Id.* (150, 151).

No attempt having been made to justify suspended rates to Louisiana and Texas, they are found not justified. *Id.* (152).

Cancellation of any-quantity rates on boots and shoes, leather and findings, from Missouri factory points, not justified. Rates proposed as collateral alignments of tariffs generally, justified. *Id.* (155).

Considering character of traffic and length of haul, etc., present rates on agricultural implements to Louisiana points not held too low, and increases are not justified. *Id.* (155).

Increased rates on furniture from Kansas City to Oklahoma points, not justified as to group 9 points; but increases to groups 6, 7, and 8, justified. *Id.* (158, 159).

Certain increases on lumber justified; others not justified. On lime and brooms, justified; on other items increases are justified except where similar rates were condemned in the *Western Rate Advance Case*. *Id.* (164, 165).

Increased rates to Atlantic ports found not justified. Present rates not found unreasonably low. *Export Grain Case*, 190.

Unless rates by direct lines are unreasonably low they can not be increased merely to accord more revenue to carriers maintaining more circuitous routes through Chicago and neighboring reshipping points. *Id.* (192).

Proposed cancellation of joint rates on coal from points in West Virginia to points in Kentucky not justified. Disagreement between carriers as to divisions is of itself no justification. *Coal to Kentucky Points*, 194 (197).

ADVANCE IN RATES—Continued.

Increased rates on lumber from points in Missouri and Arkansas to Milwaukee and points immediately south thereof found justified. Proposed adjustment removes fourth section violations now existing and prevents defeat of through rates to certain Wisconsin points at present permitted by rebilling at Milwaukee. *Lumber to Wisconsin Points*, 198.

Fact that application from St. Paul territory of Colorado common-point rates as maxima to intermediate points in eastern Colorado and Kansas results in lower rates than would obtain to such points if general basis for constructing through rates were followed, does not of itself justify increasing rates to Colorado common points. *Colorado Class Rates*, 203 (208).

Withdrawal of present Colorado common-point rates from St. Paul rate territory to common points south of Denver and establishment, in lieu thereof, of through rates based on combination of intermediate rates over Sioux City found not justified. Differences in distances in favor of St. Louis are insufficient to justify breaking up the Colorado common-point group. *Id.* (211).

Increased rates on lumber of all kinds from points on various lines in Louisiana and Arkansas to Baltimore, Philadelphia, New York, Boston, and other eastern destinations will correct a substantial inequality between certain mills, and are found justified. *Lumber Rates to Eastern Cities*, 212 (216, 217).

Cancellation of joint rates which would result in increased rates not justified the sole reason being failure to agree upon divisions. *Coal from Toluca, Ill.* 230.

Increased through charges resulting from cancellation by rail carriers of joint rates in connection with complainant water line not justified, and joint rates restored. *Black & White River Transp. Co. v. M. P. Ry. Co.* 244.

Increased switching absorptions present no justification for increased ice rates to industries on defendants' rails at Chicago. *Eagle Ice Co. v. C., M. & St. P. Ry. Co.* 250 (255).

Increased rate on ice when moving in ordinary box cars from points in Wisconsin to Chicago, not justified. The showing as to cost of service, comparisons with other rates for similar hauls to Chicago, and fact that transportation conditions have not changed lead to this conclusion. *Id.* (258).

Increased commutation fares on the P., B. & W. between Baltimore and Washington justified. It is not shown that they are likely to prove more than reasonably compensatory. *Mace v. P. B. & W. Co.* 268 (272).

Increased class and commodity rates via rail-and-lake, lake-and-rail, and rail-lake-and-rail routes between points in New England and middle Atlantic states, and the west, found not justified. *Rates via Rail-and-Lake Routes*, 311.

Increase of 1 cent on freight paying less than sixth class from various points in Chicago switching district will reduce the differential and result in loss of tonnage and revenue and is not justified. *Id.* (316-317).

Increased rates on sugar beets from Ohio points not justified. Contention that present rates are not remunerative not sustained. Some increase might properly be made from Lima, Kemp, and Spencerville, Ohio. *Sugar beets to Decatur, Ind.*, 367 (368, 369).

Increased rates on stone of all kinds, rough or dressed, not lettered or figured from twin cities to Des Moines justified for dressed stone but not for rough stone. *Stone to Des Moines, Iowa*, 372.

Reasonableness of proposed increases can not be established by pointing to fourth section violations which are thereby obviated. *Id.* (373).

Cancellation of import rates on ferromanganese thereby rendering applicable higher domestic rates, justified, it being contended that import rates were unreasonably low. *Ferromanganese to Western Points*, 374 (375).

ADVANCE IN RATES—Continued.

No effort made to justify increased rates on bituminous lump coal to destinations in Nebraska and Colorado on lines of the Union Pacific R. R., and cancellation of tariffs under suspension ordered. Coal from Colorado and Wyoming Mines, 430.

Cancellation of proportional commodity rate on broom corn from East St. Louis Ill., to Cincinnati, Ohio, applying instead the second-class rate, found justified; carriers contend that increased rate is established to comply with Commission's order in a former case. Broom Corn to Cincinnati, Ohio, 482.

Increased commodity rate on broom corn from East St. Louis, Ill., to Frankfort, Ky., justified. Respondents state that the combination on Louisville is the correct basis for constructing rates from East St. Louis to Frankfort. Broom Corn to Frankfort, Ky., 485.

Cancellation of commodity rates on green fruits in straight or mixed carloads from Grand Rapids, Mich., via interstate routes to upper peninsula of Michigan, justified. Respondents feared that if these rates were continued in effect they might be used to secure lower rates from other points. Fruits and Vegetables from Grand Rapids, Mich., 489, 490.

That coal movement is light between Manistique and Gladstone, Mich., alone is not enough to justify increase in soft-coal rate. Increased rate on soft coal, considered as a factor in through rate from Pennsylvania and West Virginia mines, not justified. *Davis v. M., St. P. & S. S. M. Ry. Co.* 523 (524).

Pere Marquette R. R. submitted evidence that its divisions of present rates are unremunerative; but it is found that proposed increased reshipping rates from Milwaukee, Manitowoc, Chicago, and other Chicago rate points will result in discrimination and are not justified. Grain from Manitowoc, Wis., 549 (551).

Increased rate on crushed stone from Ives and Racine, Wis., to Chicago, and Chicago switching district points, justified, it being a restoration of the rate formerly in effect; but increased rates from Waukesha and Burlington, Wis., to Chicago are not justified. Crushed Stone from Wisconsin Points, 593 (595).

Increased rates on lumber from Newcastle, Cal., to points between Reno, Nev., and Ogden, Utah, not justified. Reasonableness of increase can not be justified by showing that there is little or no movement and that rates are factors in a combination which is being used to defeat specific through rates. Lumber Rates from Newcastle, Cal., 596 (597).

Increased all-rail rate on bituminous coal from the Clearfield district in Pennsylvania to Rhode Island points found justified. It is for the carrier to determine whether or not it will meet water competition. Coal to Rhode Island Points, 650 (651).

Increased rates on cement from points in Pennsylvania and New Jersey to destinations on the Long Island Railroad found justified. Competition, value, risk, service, and class rates, considered; and record suggests no fundamental error or injustice in the general rate plan. Cement to Long Island Points, 694 (696).

Cancellation of commodity rates on harness, saddlery, and saddlery hardware, which result in an undue preference of manufacturing points from which they apply, and restoration of the class rates, found justified. Harness to Oklahoma, 726 (729).

Increased rates from Green Bay Shore points in central freight association and eastern trunk line territories justified to extent that they exceed present joint through rates from Milwaukee or Manitowoc plus differentials of 6, 5, 4, 3, 2, and 2 cents on the six classes, respectively. Class Rates from Michigan and Wisconsin Points, 739 (742).

AGREEMENT. *See also* **CONTRACTS.**

At hearing an understanding was reached with respect to routing of shipments of cattle to and through El Paso which was satisfactory to complainant. *Raisers Stockyards Asso. v. E. P. & S. W. Co.* 284 (286).

Commission condemns any agreement between the A. C. L. and boat line which prevents the latter from entering into joint rates with the S. A. L. or any other rail line reaching points served by it. *The Boat "H. B. Plant,"* 453 (455).

ALLOWANCES. *See also* **INDUSTRIAL RAILWAYS.**

Payment of allowances to sawmill companies at Call, Tex., and Oakdale, La. does not constitute discrimination against complainant at Milvid, Tex., since circumstances and conditions at Call and Oakdale are entirely different from those which obtain at complainant's mill. *Union Lumber Co. v. G., C. & S. F. Ry. Co.* 225 (229).

Defendant not bound to make allowances demanded merely because other carriers make allowances for yardage services at points on their lines. *Felix & Co. (Inc.) v. P. & R. Ry. Co.* 231 (233).

An allowance to an industrial line acting only in capacity of a plant facility in excess of cost of trunk line of switching to and from the plant would be unavailing. *Chicago, West Pullman & Southern R. R. Co. Case*, 408 (414).

The allowance is further limited in that it may not exceed the reasonable cost to industry of performing the service. *Id.* (414).

An allowance greater than \$1.50 per loaded car for interchange switching between industries or public team tracks and carriers connecting with Indiana Northern or between connecting carriers is excessive. This is not to be regarded as a maximum. *Indiana Northern Ry. Case*, 491 (496).

Undue discrimination against quarry company may be removed by making reasonable allowances or divisions to the Lorain & Southern. *Lorain & Southern R. R. Co. Case*, 497 (501).

Even on nonproprietary traffic divisions or allowances must not be abused. *Chestnut Ridge Railway*, 558 (560).

Maximum allowance of \$1 per car for switching for the L. & N. E. R. R. to and from the east plant prescribed. *Id.* (563).

ALL RAIL RATES. *See also* **DIFFERENTIALS; RAIL-AND-WATER RATES.**

The Lehigh Valley is in a position to demand large divisions. *Lake Line Applications Under Panama Canal Act*, 77 (79).

AMBIGUOUS TARIFFS.

Descriptions in defendants' tariffs of products of petroleum oil to which various rates are applicable are not free from ambiguity. If wax tailings was the only product intended to be shipped under the term "tailings," the tariffs should so state. *National Petroleum Asso. v. A., T. & S. F. Ry. Co.* 287 (293).

ANALOGOUS ARTICLES.

Brick, sand, and gravel said to be analogous in that they are low-grade commodities and do not permit of very long hauls. *Riddle v. N., C. & St. L. Ry.* 602 (603).

ANY-QUANTITY RATES.

Cancellation of, on boots and shoes, leather and findings, not justified. *1915 Western Rate Advance Case - Part II*, 114 (155).

Establishment of carload and less-than-carload ratings on leaf tobacco in lieu of any-quantity rating not justified. *Official Classification Ratings*, 106 (127).

APPEARANCE.

None for defendant. *Fisher Mfg. Co. v. N. Y., N. H. & H. R. R. Co.* 547; *Elm City Lumber Co. v. A. C. L. R. R. Co.* 571.

None for complainant. Reparation awarded. *Hoskins v. P., C., C. & St. L. Ry. Co.* 575.

No appearances. *General-Equipment Co. v. A. C. L. R. R. Co.* 620.

APPENDIX. See also TABLES.

To Commission's report. *Western Passenger Fares*, 1 (47); *Rates via Rail-and-Lake Routes*, 302 (319); *Shelbyville Business Men's Asso. v. L. & N. R. R. Co.* 675 (685).

ARBITRARIES.

General basis for constructing through rates from eastern rate territories to points in eastern Colorado, western and central Kansas, is to add fixed arbitraries to rates from Mississippi River. *Colorado Class Rates*, 203 (207).

Rates to Baltimore, Philadelphia, New York, Boston, and other points in eastern trunk line territory are made by addition of arbitraries to rates to eastern gateways, such as Potomac Yards. *Lumber Rates to Eastern Cities*, 212 (215).

Present difference of 2 cents between rates from north to Paducah and Cairo on classes and commodities not involved herein is not found excessive. Commission has approved a spread of 1 cent on lumber and on certain other commodities, but is unable to find that same arbitrary should apply on all classes and commodities. *Paducah Board of Trade v. C., B. & Q. R. R. Co.* 743 (752, 753).

ASSOCIATION OF LAKE LINES.

Exercises a dominating influence over its members favorable to interests of the railroad owning lake lines. *Rates via Rail-and-Lake Routes*, 302 (303).

Exhibit showing steamers operated by 11 lake lines. *Appendix. Id.* (319).

AVERAGES.

Average population per square mile and per mile of road, average passenger-train revenue, average number of passengers carried 1 mile per mile of road, etc. Table No. 20. *Western Passenger Fares*, 1 (33).

Tonnage and number of cars per freight train and number of cars and passengers per passenger train. *Id.* (34-35).

Loading of agricultural implements. 1915 Western Rate Advance Case—Part II, 114, (124).

Average value per ton and average loading of agricultural implements, machinery, and iron and steel articles. *Id.* (125).

The mere fact that the average loading of machinery and of iron and steel articles shown is not fairly representative of average loading in territory covered by suspended schedule is not sufficient to impair the value of the comparison. *Id.* (127).

Car-mile earnings on eggs and haul to Texas common points. *Id.* (136).

Loading of half-barrels and smaller sizes ranges from about 23,000 to 45,000 pounds. *Official Classification Ratings*, 166 (176).

Loading of merchandise cars is from 10,000 to 12,000 pounds; of package cars probably less. *Id.* (184).

Average difference in distance, Minneapolis and St. Louis to Colorado common points south of Denver, is so small that it can not be held either to justify breaking up of the long-established group basis or be made the determining factor in this case. *Colorado Class Rates*, 203 (209).

Distances and revenues from San Pedro and Williams to Bisbee, Globe, and Ray Junction, Ariz., shown. *McCormick & Co. v. S. P. Co.* 234 (236).

Average loading of ice is between 28 and 30 tons. Average distance, ton-mile and car-mile earnings considered. *Eagle Ice Co. v. C., M. & St. P. Ry. Co.* 250 (252).

Load, haul, and car-mile earnings considered in determining reasonableness of proposed adjustment. *Rates on Tin Cans and Other Commodities*, 360 (361).

Earnings per loaded car per day and rate per ton-mile. *Sugar Beets to Decatur, Ind.*, 367 (368).

Loading of burlap is about 45,000 pounds and of bags about 35,000 pounds. *New Orleans Joint Traffic Bureau v. A. & S. Ry. Co.* 444 (446).

Carload, haul, and earnings per car-mile and per ton-mile. *Broom Corn to Frankfort, Ky.*, 485 (487).

AVERAGES—Continued.

It is not shown that the proposed minimum reasonably comports with the average loading. Grain from Manitowoc, Wis., 549 (556).

Average cost of ice and icing at Crozet, Va. *Smith v. C. & O. Ry. Co.* 604 (605).

The unweighted average distance from Couderay to other Wisconsin points is 315 miles, weighted average distance, 296 miles. *Bekkedal v. C., St. P., M. & O. Ry. Co.* 611 (612, 613).

Haul and rate on wheat from stations on lines of Northern Pacific to Superior and Great Northern to Duluth. *Holmes & Hallowell Co. v. G. N. Ry. Co.* 627 (634).

Distances from southwestern Virginia and Coal Creek, Tenn., districts to Carolina territory, considered. Bituminous Coal Rates to the Southeast, 652 (659).

Average distances via various routes from points in Arkansas and Louisiana to Paducah, Ky. *Paducah Board of Trade v. I. C. R. R. Co.* 719 (721, 722).

BARGE RATES.

Available only to shippers who contract for large quantities of coal. Coal to Rhode Island Points, 650 (651).

BETTERMENTS.

Expensive fittings, furnishings, safety equipment, etc., are provided for passenger traffic, and service has been improved both in speed and regularity. *New York-Jersey City Ferry Rates*, 103 (110).

BILL OF LADING.

Two cars covered by single bill of lading. Demurrage on car held pending arrival of second car is not unlawful. *Darling & Co. v. P., C., C. & St. L. Ry. Co.* 491.

BILLING.

Shipments involved were lawfully billed as petroleum tailings, and higher charges based on rates applicable to fuel oil were unlawful and must be refunded. *National Petroleum Assn. v. A., T. & S. F. Ry. Co.* 287 (294).

BLANKET RATES.

Rate comparisons, where points selected are on the outer margins of two large blankets, are not helpful. Peaches from Missouri Points, 89 (91).

No reason shown of record for requiring a blanket adjustment on lumber wagons to Alexandria and other points in Louisiana. *Brown-Roberts Hdwr. & Supply Co. v. A. & V. Ry. Co.* 671 (673).

BOAT LINES. See also COMPETITION (RAIL-AND-BOAT LINES); LAKE LINES; PANAMA CANAL ACT.

Packet companies do not operate a through boat service from Memphis to Pine Bluff, freight is transferred at Rosedale, and service between Rosedale and Pine Bluff is not dependable. Public interest does not demand establishment of joint rates with rail lines at Memphis while prevailing conditions continue. *Pine Bluff Traffic Bureau v. L. & N. R. R. Co.* 218 (219, 223).

Rail carriers required to reestablish joint rates. *Black & White River Transp. Co. v. M. P. Ry. Co.* 244 (249).

Application of Central of Georgia Ry. to continue operation of Ocean Steamship Co. of Savannah, granted. *Ocean S. S. Co. of Savannah*, 422.

Continued operation of service between Miami, Fla., and Nassau, Bahamas Islands, is not, and will not be, in violation of the Act. *Peninsular & Occidental S. S. Co.* 432 (434).

Case held open for period of 60 days for petitioners to revise their rates and divisions. *Id.* (440).

Application for permission to operate the boat *H. B. Plant* beyond July 1, 1914, granted, subject to such further orders as may hereafter be entered. *The Boat "H. B. Plant"*, 453 (456).

BOAT LINES --Continued.

So long as their respective operations remain as at present petitioner's operation of steamers through oil company is not, and will not be, in violation of section 5. S. P. Co. Ownership of Oil Steamers, 525 (537).

BOND. See FINANCIAL RESPONSIBILITY.

BOOK COST.

Arbitrary method of assignment of this or that portion of book cost of entire property to passenger traffic is unsatisfactory. Western Passenger Fares, 1 (28).

BOTH DIRECTIONS.

Agricultural implements and machinery move in large volume throughout the year, ordinarily in box-car equipment, in opposite direction to heavy movement of grain and products. 1915 Western Rate Advance Case—Part II, 114 (128).

While the rate in one direction is not always a fair test of what the rate should be in the opposite direction, there is no suggestion of any reason for higher rates on bauxite from East St. Louis to Arkansas than in the opposite direction. Id. (145).

Rate on packing-house products from Houston to New Orleans not unreasonable or unjustly discriminatory in favor of New Orleans competitors who have a lower rate to Houston. Houston Packing Co. v. I. & G. N. Ry. Co. 584 (585).

There is apparently some justification for a lower rate on ice from Jamestown, N. Y., to Corry, Pa., than from Corry to Jamestown, since natural ice is cut at Jamestown and distributed in large quantities; but difference between rates applicable to and from Jamestown was too great. Chautauqua Refrigerating Co. v. Erie R. R. Co. 625 (626).

Carriers left to decide whether the discrimination should be eliminated by imposing uniform bridge charges in both directions or by absorbing them in both directions. Paducah Board of Trade v. C., B. & Q. R. R. Co. 743 (753).

A comparison of rates applying north from Knoxville with those applying south from Cincinnati does not show the Knoxville rates to be unreasonable, as competition fixes Cincinnati rates. Traffic Bureau of Knoxville, Tenn., v. C., N. O. & T. P. Ry. Co. 687 (691).

Water competition at Frankfort, Ky., appears to be as potent on westbound traffic as on eastbound traffic; therefore rates from Shelbyville to Louisville are not found unjustly discriminatory as compared with rates from Frankfort, Shelbyville Business Men's Asso. v. L. & N. R. R. Co. 675 (680-681).

BOUNDARY LINE.

Boundary line of Pittsburgh district fixed at Ten Mile Creek which includes Besco, Pa. Pitt Gas Coal Co. v. P. R. R. Co. 240 (243).

Present boundary lines of parts of the St. Louis, Louisville, and Nashville groups described and discussed. Paducah Board of Trade v. A. & S. Ry. Co. 760 (761-763).

BRANCH LINES.

From an operating standpoint, the line from Anchorage to Shelbyville, Ky., must be considered a branch line. Shelbyville Business Men's Asso. v. L. & N. R. R. Co. 675 (680).

BRIDGE TOLL.

Paid by St. L. & S. F. at St. Louis which is absorbed. 1915 Western Rate Advance Case—Part II, 114 (144).

Paid by Rock Island at Memphis. Id. (144).

Reparation on account of undue discrimination against New Albany, Ind., denied. Manufacturers & Merchants Asso. v. A. & A. R. R. Co. 350.

BRIDGE TOLL—Continued.

Rates must be made so as to avoid discrimination. If a bridge toll is charged at one crossing it should be charged at all crossings; if it is absorbed at one crossing it should be absorbed at all crossings. *Paducah Board of Trade v. C., B. & Q. R. R. Co.* 743 (751).

Carriers to decide whether discrimination should be eliminated by imposing uniform bridge charges in both directions or by absorbing them in both directions. *Id.* (753).

BRIDGES.

Carriers maintain that bridges spanning Mississippi and Ohio Rivers are expensive and that cost of their construction and maintenance should be reflected in the rates. It is clear that in determining the relative reasonableness or practicability of two routes operating conditions are entitled to consideration. *Paducah Board of Trade v. I. C. R. R. Co.* 719 (722).

BURDEN OF PROOF.

Had rates involved not been advanced and then subsequently reduced to the level of January 1, 1910, the burden of showing their unreasonableness would be upon complainants; but when a restoration of rates to level of January 1, 1910 has been made, the burden of proof, while undeniably on the carrier, may be satisfied by less rigorous proof than would otherwise be necessary. *Holmes & Halliwell Co. v. G. N. Ry. Co.* 627 (639).

BURDEN OF TRANSPORTATION.

Each class of service should bear reasonable charges therefor, having due regard to cost and value thereof, examined in light of other pertinent considerations. *Western Passenger Fares*, 1 (42).

Proposed increased rates are intended to equitably distribute charges among different types of vehicles and to secure additional revenue. Theory not condemned, but increase held unnecessary. *New York-Jersey City Ferry Rates*, 103 (112, 113).

CANCELLATION.

Of reshipping domestic and export rates on grain and products from Milwaukee to Norfolk, Newport News, and other eastern points via Pere Marquette R. R., not justified. *Grain from Manitowoc, Wis.*, 549 (552).

CAR FERRY

Between Key West and Havana is to be viewed simply as an extension of the line of railway of the Florida East Coast. *Peninsular & Occidental S. S. Co.* 433 (436).

All traffic hauled via the branch line from Carbondale, Ill., to Paducah, Ky., must be carried from Brookport, Ill., to Paducah by car ferry. *Paducah Board of Trade v. C., B. & Q. R. R. Co.* 743 (748).

CAR FITTING.

It is not unreasonable or unlawful to require complainant to bear expense of installing temporary doors necessary to protect carriers' equipment from damage from shifting and lurching of contents. *Keystone Wood Co. v. P. R. R. Co.* 622 (624).

Weight of inside door protection has always been included in gross weight of shipments, and practice is not unlawful. *Id.* (624).

CAR FURNISHING.

In warm weather a perishable commodity like ice requires good cars for its transportation, and it is carriers' duty to furnish such cars upon reasonable request. *Eagle Ice Co. v. C., M. & St. P. Ry. Co.* 250 (258).

CARLOAD AND LESS THAN CARLOAD.

Rates on less-than-carload shipments of wire bag ties from Waukegan, Chicago, and Toledo to Colton, Cal., not found unreasonable. *California Portland Cement Co. v. A., T. & S. F. Ry. Co.* 99.

It is obviously to the interest of the large manufacturer that the spread between the carload and less-than-carload rates be as great as possible. Increased less-than-carload rates on boots and shoes and findings, not justified. Carload rates justified except increases in minima. 1915 Western Rate Advance Case—Part II, 114 (148).

What percentage relationship should exist between carload and less-than-carload rates is difficult to determine in any case. Increased rates on dried and evaporated fruits from Arkansas and Oklahoma points, justified. *Id.* (150, 151).

Rate per 100 pounds or per ton on less-than-carload shipments of boots and shoes, leather, and findings can not lawfully vary with quantity shipped. *Id.* (155).

Application of carload rate and minimum on billiard tables and fixtures from Des Moines to Chicago not unreasonable. It is not shown that complainant complied with rule governing the marking of each piece of less-than-carload freight, or that shipment was to be forwarded at the less-than-carload rate and actual weight. *Passow & Sons v. C., M. & St. P. Ry. Co.* 711.

CARMACK AMENDMENT.

Validity of, upheld by Supreme Court. *Black & White River Transp. Co. v. M. P. Ry. Co.* 244 (247).

CAR-MILE EARNINGS. *See Averages; Earnings; Measure of Rates.*

CARS. *See also EQUIPMENT; PASSENGER CARS.*

Increased rate on ice in box cars not justified. An additional charge of 10 cents per ton on shipments in refrigerator or insulated cars would be justified. *Eagle Ice Co. v. C., M. & St. P. Ry. Co.* 250 (258).

There is plainly a fair analogy between trains composed of logging cars and those composed of cane cars. *Safety Appliances on Railroads in Porto Rico*, 470 (476).

CASHMAN ACT.

Referred to. *Holmes & Hallowell Co. v. G. N. Ry. Co.* 627 (640).

CHICAGO, WEST PULLMAN & SOUTHERN R. R. CO.

History of, and description of line as at present operated. *Chicago, West Pullman & Southern R. R. Co. Case*, 408 (409).

Analysis of traffic and revenues for year ended June 30, 1913. *Id.* (413).

CINCINNATI SOUTHERN R. R. CO. *See also COMPELLED RATES.*

Built in interests of Cincinnati Merchants, compelled a low plane of rates from Cincinnati to points in central Kentucky. *Traffic Bureau of Knoxville, Tenn., v. C., N. O. & T. P. Ry. Co.* 687 (690).

Purpose of construction. *Paducah Board of Trade v. C., B. & Q. R. R. Co.* 748 (750).

CIRCUITOUS ROUTES.

If lines operating by way of Chicago can not meet reasonable rates by direct lines they should relinquish the traffic. *Export Grain Case*, 190 (192).

Route from Sellersburg, Ind., through Kosmosdale, Ky., to southern Indiana and Illinois over which no traffic moves. *Kosmos Portland Cement Co. v. I. C. R. R. Co.* 449 (452).

Distance over water route, Tampa to St. Petersburg, Fla., is 20 miles; via the circuitous all-rail route, 142 miles. *The Boat "H. B. Plant"*, 453 (454).

Rates from Louisville to Shelbyville, Midway, Lexington, and Georgetown, Ky., not shown to be excessive by the circuitous route of the Southern Ry. in Kentucky. *Shelbyville Business Men's Asso. v. L. & N. R. R. Co.* 675 (682).

CIRCUMSTANCES AND CONDITIONS.

It is well settled that unless circumstances and conditions are similar at two points no unlawful discrimination may properly be predicated upon different rates and practices. *Union Lumber Co. v. G., C. & S. F. Ry. Co.* 225 (229).

CLAIMS. See FORMAL COMPLAINT; LIMITATION OF ACTION.

CLASS AND COMMODITY RATES.

Increased rates on canned goods, which tends to equalize commodity and class rates where they are not now the same, justified. 1915 Western Rate Advance Case—Part II, 114 (129, 130).

Cancellation of commodity rate justified. Broom Corn to Cincinnati, Ohio 492
Fruits and Vegetables from Grand Rapids, Mich., 489.

Commodity rate charged on threaded iron rods from Indiana Harbor, Ind., to Des Moines, Iowa, was not legally applicable. Fifth-class rate which should have been applied is not unreasonable or unjustly discriminatory. *New Moon Machine & Stamping Co. v. I. H. B. R. R. Co.* 589 (590).

Commodity rate, St. Louis to Denver, which applied only to cotton fabrics made wholly of cotton, was inapplicable to shipments of waterproofed cotton duck. First-class rates, applicable to dry goods, n. o. s., were lawfully applicable. *Colorado Tent & Awning Co. v. D. & R. G. R. R. Co.* 617 (618).

Class rates and rates on certain commodities between Louisville and Shelbyville Ky., applicable to interstate traffic, found unjustly discriminatory to extent that they exceed corresponding rates between Louisville and Lexington, Georgetown, Midway, or Paris. *Shelbyville Business Men's Assn. v. L. & N. R. R. Co.* 675.

Joint rates on classes and commodities from Knoxville, Tenn., to certain stations on the C., N. O. & T. P. Ry. in Kentucky found unreasonable to extent they exceed rates from Chattanooga. *Traffic Bureau of Knoxville, Tenn., v. C., N. O. & T. P. Ry. Co.* 687.

The Commission can not ignore the fact that rates for the transportation service are divided into class rates and commodity rates and that some articles, which move in large volume and in carload quantities, are usually accorded commodity rates, while articles of general merchandise, moving in less-than-carload quantities, usually take class rates. *Harness to Oklahoma*, 726 (728).

Commodity rates canceled, class rates made applicable. *Id.* (729).

Class and commodity rates from points in central freight association territory, including points in Illinois north of Carbondale, and western trunk line territory via Paducah to points in Tennessee on and west of the line of the I. C. R. R. extending from Fulton, Ky., through Corinth, Miss., are unjustly discriminatory to extent they exceed through rates via Cairo. *Paducah Board of Trade v. C., B. & Q. R. R. Co.* 743 (752).

Defendants required to establish, from Paducah, Ky., to points in the southwest not in excess of those in effect from Cairo. *Paducah Board of Trade v. A. & S. Ry. Co.* 760.

CLASS RATES.

Rates on various less-than-carload shipments of wire bag ties from Waukegan and Chicago, Ill., and Toledo, Ohio, to Colton, Cal., first-class, packed in crates, one and one-half times first-class, packed in containers other than boxes or crates held not unreasonable. *California Portland Cement Co. v. A., T. & S. F. Ry. Co.* 99 (100).

Class A rates generally higher than fifth-class rates in western trunk line territory 1915 Western Rate Advance Case—Part II, 114 (119).

Commission can not condemn proposed adjustment of rates on agricultural implements merely because all rates have not been brought up to Class A. *Id.* (129).

Commission not to be understood as finding that each individual Class A rate or the relationship of each to other class rates is necessarily reasonable. *Id.* (129).

CLASS RATES—Continued.

Withdrawal of present Colorado common-point class rates from St. Paul territory to common points south of Denver, not justified. Rates from St. Paul no higher than from St. Louis prescribed. *Colorado Class Rates*, 203.

In former cases the Commission has sustained the application of class rates on apples. *Public Service Commission of Missouri v. Wabash R. R. Co.* 297 (299).

Comparative statement showing class rates and differentials via standard and differential routes to Chicago and St. Louis. *Appendix. Rates via Rail-and-Lake Routes*, 302 (328).

Class rates between Minnesota points and Fargo, N. Dak., not found unreasonable. *Holmes & Hallowell Co. v. G. N. Ry. Co.* 627 (641).

Class rates on motorcycles in western classification territory have been held unreasonable to extent that they exceeded class rates on bicycles: First class for carloads and one and one-half times first class for less than carloads. *Pacific Motor Supply Co. v. A., T. & S. F. Ry. Co.* 703 (705).

Proposed readjustment of joint class rates from Green Bay shore points to points in central freight association and eastern trunk-line territories found justified to extent indicated in report. *Class Rates from Michigan and Wisconsin Points*, 739.

From St. Louis territory and Nashville territory to Texas common points shown. *Paducah Board of Trade v. A. & S. Ry. Co.* 760 (763).

CLASSIFICATION. See also AMBIGUOUS TARIFFS; UNIFORM CLASSIFICATION.

Hides and packing-house products generally take same rates throughout western.

Hide rates from St. Paul and Minneapolis to Chicago and Chicago rate points are unreasonable to extent they exceed rates on packing-house products. *Bergman & Co. v. C. & N. W. Ry. Co.* 71 (72).

No specific rating on wire bag ties in western prior to February 14, 1913. Second-class rating then established. *California Portland Cement Co. v. A., T. & S. F. Ry. Co.* 99 (100).

Removal of flue lining from list of commodities taking brick rates and application of class E thereon, found justified. *1915 Western Rate Advance Case—Part II*, 114 (135).

Boots and shoes are rated first class, any quantity, in official, western, and southern. *Id.* (147).

Higher ratings on beer, beer tonic, ale, and porter, on nonalcoholic beverages, on plug or twist tobacco, in carloads and less than carloads, and on tobacco cuttings or scraps and tobacco siftings or sweepings, on grain and grain products, on animal, poultry, and pigeon feed, not medicated, and on rags, waste paper, and other paper makers' fibers, in less than carloads, not justified. *Official Classification Ratings*, 166.

Higher ratings on beer barrels and certain other cooperage, both new and old, and on old bottles, in carloads and less than carloads, and on old bottle carriers in carloads, justified. *Id.* 166.

Establishment of carload and less-than-carload ratings on leaf tobacco in lieu of any-quantity rating, not justified. *Id.* 166.

Beer moves in official territory almost entirely under class rates. In western and southern territories the ratings are substantially the same as in official, but movement is largely under commodity rates lower than class rates. *Id.* (170).

Commission is concerned with the justness, fairness, and reasonableness of proposed classification ratings as applied to actual shipments, and only incidentally with theories upon which such ratings are constructed. *Id.* (177, 186).

Leaf tobacco traffic moves in all three territories in any quantity under a rating of fourth class. There is a large interterritorial movement. *Id.* (181).

It does not appear that plug or twist tobacco should be added to list of articles taking higher than fourth class. *Id.* (183).

CLASSIFICATION—Continued.

Residual low-grade oils in western. Various terms used. *National Petroleum Asso. v. A., T. & S. F. Ry. Co.* 287 (291).

In western and official apples take fifth-class rates and in southern sixth class. *Public Service Commission of Missouri v. Wabash R. R. Co.* 297 (298).

Sugar beets classified fifth class in official; but generally move on lower basis in c. f. a. territory. *Sugar Beets to Decatur, Ind.*, 367.

Rates on scrap iron generally are understood to apply on scraps or pieces of steel or iron useful only for remelting. *Watrous Acme Mfg. Co. v. P. M. R. R. Co.* 398 (399).

In a working classification every contingency can not be provided for and necessarily some exceptions must be established to a general rule of character involved. *Classification Nesting Rule*, 477 (481).

Broom corn has been classified second class in official territory for over 30 years. *Broom Corn to Cincinnati, Ohio*, 482 (483).

Apparently the elements of bulk, space, weight, expense of carriage, risk, character of article, and competition considered in classification of dressed marble and dressed stone, and polished marble and polished stone, respectively, are identical. *Drake Marble & Tile Co. v. N. P. Ry. Co.* 512 (514).

Item of southern classification relating to wire has been canceled since hearing and complaint is dismissed. *American Steel & Wire Co. v. A. & V. Ry. Co.* 525. Confusion and uncertainty as to rates to be applied on flat wire, bar, band, hoop, rod, and flat iron and cold-rolled or drawn steel, flat, etc., should not exist, and carriers should revise their classification descriptions. *Id.* (527).

Western has rated motorcycles in less than carloads one and one-half times first class, and no order for future entered. *Pilcher Hdwe. Co. v. C. & N. W. Ry. Co.* 542 (543).

The term bar iron did not cover bars that had been threaded, and complainant admits that rods shipped were not band iron. Fifth-class rate applicable to threaded iron rods in western should have been applied. *New Monarch Machine & Stamping Co. v. I. H. B. R. R. Co.* 589 (590).

Ratings applied on l. c. l. shipments of dynamos and electric transformers for scrap purposes held not unreasonable or unjustly discriminatory. Commission declined to sanction the principle that old and secondhand articles are necessarily entitled to lower ratings than same articles when new. *Industrial Traffic Asso. v. N. Y. C. & H. R. R. Co.* 607 (608).

Dry Goods, n. o. i. b. n., are rated first class both in western and official. Cotton piece goods, n. o. s., l. c. l., are rated rule 25, or 15 per cent less than second class in official, and are subject to the first-class rating in western. First-class rating held lawfully applicable on waterproofed cotton duck. *Colorado Text & Awaing Co. v. D. & R. G. R. R. Co.* 617.

Motorcycles rated same as bicycles in western: First class in carloads and one and one-half times first class for less than carloads. *Pacific Motor Supply Co. v. A. T. & S. F. Ry. Co.* 703 (705).

Through rates, and differentials set forth, are governed by official classification, whereas the local rates up to the ports are governed by western. *Class Rates from Michigan and Wisconsin Points*, 739 (742).

What might be primarily a rate question in one case might properly be considered a classification problem in another. The record shows clearly that commodity rates on harness, saddlery, and saddlery hardware constitute a departure from the usual basis and result in an undue preference of the manufacturing points from which they apply. *Harness to Oklahoma*, 726 (728, 729).

CLEANING AND DISINFECTING.

Pens used for shipments of infected cattle had not been cleaned and disinfected and complainant shipped from point taking higher rate. Commission can not award reparation. *Criswell v. W. F. & N. W. Ry. Co.* 97 (98).

COMBINATION RATES.

Increased rates on peaches from Koshkonong-Brandsville district in southern Missouri and northern Arkansas to eastern points, made by combination on Mississippi River, justified. Peaches from Missouri Points, 89.

Rate of 16 cents on logs from Boyd, Ala., to Chattanooga, Tenn., found unreasonable to extent it exceeded 13.5 cents, the component between York, Ala., and Chattanooga being unreasonable to extent it exceeded 8.5 cents. *McLean Lumber Co. v. A., T. & N. Ry.* 520 (521).

Combination l. c. l. rate on writing paper from Adams, Mass., to Philadelphia, Pa., routed by way of Sixtieth Street, New York City, not found unreasonable. *Brown Paper Co. v. B. & A. R. R. Co.* 586.

COMMERCIAL CONDITIONS. See also COST OF PRODUCTION.

It is well settled that Commission may not make needs of shipper the basis for reasonable rates. 1915 Western Rate Advance Case—Part II, 114 (150).

The reasonableness or unreasonableness of a rate does not depend exclusively upon shippers' ability profitably to market their products under it. *Riddle v. N., C. & St. L. Ry.* 602.

The Commission has repeatedly held that it can not equalize commercial or industrial conditions. *Big Basin Lumber Co. v. S. P. Co.* 730 (737).

COMMERCIAL LOSSES. See EQUALIZING TRANSPORTATION COSTS.**COMMODITIES CLAUSE.**

Petitioner shows that commodities clause does not make it unlawful for boat lines to transport commodities owned by them. *Cumberland Transp. Co. v. C., N. O. & T. P. Ry. Co.* 463 (467).

COMMODITY RATES.

Not ordinarily required from points at which no traffic originates. *Lumber Rates from Newcastle, Cal.*, 596 (597).

COMMON CARRIER.

Complainant is a bona fide common carrier and is not owned by or affiliated with any lumber interest. *Black & White River Transp. Co. v. M. P. Ry. Co.* 244 (245, 246).

Indiana Northern held to be a common carrier, with which connecting lines may join in publishing through rates or to which they may grant allowances for interchange switching. *Indiana Northern Railway Case*, 491 (494).

Record discloses no attempt by Central of Georgia or Illinois Central to influence affairs of steamship company through ownership or control of stock. *Ocean S. S. Co. of Savannah*, 422 (427).

COMMUTATION FARES. See also TICKETS.

Increased commutation fares on the P., B. & W. between Baltimore and Washington justified. *Mace v. P. R. R. Co.* 268.

The disparity between commutation receipts and estimated expense of commutation traffic on former basis of fares is apparently too great to warrant an assumption that increased fares are likely to prove more than reasonably compensatory. *Id.* (272).

COMPANY MATERIAL.

Divisions of Joint Rates on Railway Fuel Coal, 265 (266).

COMPARATIVE RATES.

Rates on green hides from St. Paul and Minneapolis to Chicago and Chicago rate points found unreasonable to extent they exceed rates on packing-house products. *Bergman & Co. v. C. & N. W. Ry. Co.* 71.

COMPARATIVE RATES--Continued.

Rate on wire bag ties to Colton, Cal., not unreasonable as compared with lower rate on shingle bands and other wire articles. *California Portland Cement Co. v. A., T. & S. F. Ry. Co.* 99 (100).

Agricultural implements, machinery, and iron and steel articles. 1915 Western Rate Advance Case -Part II, 114 (121).

As machinery, which moves in greater quantities than the agricultural implement mixture, takes class A rates, no reason appears why the implement mixture should not be on same basis. *Id.* (128).

Comparison of rates and per ton-mile revenue on brick, flue lining, sewer pipe, and Class E. *Id.* (132).

Certain clay products enumerated, which take brick rates, do not compete with flue lining, and it would seem not unreasonable to assess a higher rate on flue lining. *Id.* (135).

Old bottle carriers are a commodity closely related to old bottles themselves and so far as record shows should be treated in same manner. *Official Classification Ratings*, 166 (177).

Record indicates that tobacco ranks in value with other agricultural products which are accorded both carload and less-than-carload ratings. *Id.* (179).

Proposed readjustment, making applicable same rate on pine as on other kinds of lumber, justified. *Lumber Rates to Eastern Cities*, 212 (216).

Between eastern points and California terminals and points intermediate thereto buckwheat and corn flour are not to be rated higher than wheat flour. *Rates on Buckwheat and Corn Flour*, 361 (366).

Shipments of sheet steel cuttings were not composed of scrap iron and charges held not unreasonable. *Watrous Acme Mfg. Co. v. P. M. R. R. Co.* 393 (399).

Rate on burlap bags, New Orleans to Dallas, not to exceed by more than 5 cents the import rate on burlap, prescribed. *New Orleans Joint Traffic Bureau v. A. & S. Ry. Co.* 444 (448).

Rates or ratings on polished building marble and dressed building marble in excess of those applicable to polished building stone and dressed building stone, respectively, will be unjustly discriminatory. *Drake Marble & Tile Co. v. N. P. Ry. Co.* 512 (516).

Any rates charged on polished building marble and dressed building marble from St. Paul, Minn., to Bellingham, Wash., in excess of those applicable to polished building stone and dressed building stone, respectively, will be unjustly discriminatory. *Drake Marble & Tile Co. v. G. N. Ry. Co.* 517 (519).

Brick, sand, and gravel. *Riddle v. N., C. & St. L. Ry.* 602 (603).

Kindling wood in bundles is not included in the category of bulk freight on which defendant's tariffs provide an allowance for cost of installing door protection. *Keystone Wood Co. v. P. R. R. Co.* 622 (623).

Carriers expected to readjust their rates to stations in Louisiana to which lumber wagons may be shipped on a basis not in excess of that applicable on farm wagons. *Brown-Roberts Hdw. & Supply Co. v. A. & V. Ry. Co.* 671 (673).

Proposed increased rates on cement from points in Pennsylvania and New Jersey to destinations on the Long Island Railroad compared with rates on slate, hard, ground limestone, and "high-class common brick." *Value and risk discussed Cement to Long Island Points*, 694 (695).

Class rates on motorcycles in western classification territory have been held unreasonable to extent that they exceeded class rates on bicycles: First class for cartload and one and one-half times first class for less than cartloads. *Pacific Motor Supply Co. v. A., T. & S. F. Ry. Co.* 703 (705).

COMPELLED RATES. *See also* CINCINNATI SOUTHERN R. R. Co.

Rate to Louisville said to be compelled in that the L. & N. R. R. has insisted that rate from East St. Louis to Louisville shall not exceed rate from Memphis to Louisville. Broom Corn to Cincinnati, Ohio, 482 (484).

Adjustment of rates in central Kentucky. Shelbyville Business Men's Asso. v. L. & N. R. R. Co. 675 (678); Traffic Bureau of Knoxville, Tenn., v. C., N. O. & T. P. Ry. Co. 687 (691).

COMPENSATORY RATES. *See* NONCOMPENSATORY RATES.**COMPETITION.****Carrier:**

Competition of Hudson tubes. New York-Jersey City Ferry Rates, 103 (110).

Cross-country:

A substantial increase in rates on one road would divert traffic over country roads to the other line, and this fact has been a deterrent toward any change in the long-established adjustment in central Kentucky. Traffic Bureau of Knoxville, Tenn., v. C., N. O. & T. P. Ry. Co. 687 (690).

Foreign:

The protection of American manufacturers and producers from foreign competition is not within the powers of this Commission. Big Basin Lumber Co. v. S. P. Co. 730 (738).

Market:

No competition between Kansas City and St. Louis on eggs moving to Texas destinations. 1915 Western Rate Advance Case—Part II, 114 (136).

Bauxite produced in this country has thus far come in serious competition only with that from France. *Id.* (141).

Nonalcoholic beverages are sold in competition with light beers. Official Classification Ratings, 166 (172).

Between miller who ships in less-than-carload quantities and large miller who ships in carload quantities; and between traffic moving from retail stores and small jobbing houses and traffic moving in carloads from wholesale houses in same towns. *Id.* (185).

Mills located on Tremont & Gulf concede their advantage over competitors on Louisiana & Arkansas R. R. in marketing pine lumber in Baltimore, Philadelphia, and New York. Increase removing inequality found justified. Lumber Rates to Eastern Cities, 212 (216).

Chief competition of Arizona mills was from San Pedro, and intrastate rates were made with relation thereto. McCormick & Co. v. S. P. Co. 234 (237).

In Chicago market between producers of natural ice, and between natural ice and artificial ice manufactured at Chicago. Eagle Ice Co. v. C., M. & St. P. Ry. Co. 250 (251).

Where the freight rate permits, apples grown in Missouri Valley territory are of such quality as to enable them to be marketed in competition with fruit from any section of the country. Public Service Commission of Missouri v. Wabash R. R. Co. 297 (300).

Materials used in construction of tanks and towers are not competitive with materials used for bridges and buildings. Fabrication in transit at Greenville, Pa., 370 (371).

Influences rates on cement from St. Louis, Hannibal, Mitchell, Sellersburg, etc., to points in Illinois, Indiana, and Ohio; but from Kosmosdale, Ky., an arbitrary is added without regard to competition. Kosmos Portland Cement Co. v. I. C. R. R. Co. 449 (451).

Commission merchants at Cincinnati encounter competition with Chicago jobbers at northern Ohio points. Broom Corn to Cincinnati, Ohio, 482 (483).

COMPETITION—Continued.**Market—Continued.**

Quarry company forced to operate at a disadvantage in comparison with the Stone company, its competitor. *Lorain & Southern R. R. Co. v. Case* 497 (501).

Complainant at Brownsville, Tenn., is required to shrink its profits by the amount of difference in rates in order to meet competition of mills at Memphis and other points. *Brownsville Cotton Oil & Ice Co. v. C. & E. I. & P. Ry. Co.* 503 (505).

Complainants ship lumber into c. f. a. territory in competition with lumber dealers at St. Louis. *Brown & Sons Lumber Co. v. L. & N. R. R. Co.* 507 (511).

Band and bar iron have been shipped under special iron rates in competition with and for similar uses as complainant's flat wire. *American Steel & Wire Co. v. A. & V. Ry. Co.* 525 (526).

Atchison, Kans., and Kansas City and St. Joseph, Mo., are important jobbing points in keen competition with Topeka, Kans. *Topeka Traffic Assn. v. A. & W. Ry. Co.* 598.

Evidence does not show that Fargo, N. Dak., merchants or dealers are in competition with those at Moorhead, Minn. *Holmes & Hallowell Co. v. G. N. Ry. Co.* 627 (637).

Competition at markets in Kentucky is keen, and it appears that Knoxville jobbers are suffering a gradual loss of trade on account of activities of other cities having more favorable rates, both inbound and outbound. *Traffic Bureau of Knoxville, Tenn., v. C., N. O. & T. P. Ry. Co.* 687 (688).

At destinations between Lehigh, Nazareth, and New Jersey districts and so-called Hudson River district. *Cement to Long Island Points*, 694 (695).

Harness and saddlery manufacturers at Dallas, Tex., come into competition with manufacturers at Kansas City, St. Joseph, and St. Louis, from which points class rates apply. *Harness to Oklahoma*, 726 (729).

Complainants in California and southern Oregon encounter competition from the inland empire and northern Mexico, but this competition is restricted to doors. *Big Basin Lumber Co. v. S. P. Co.* 730 (733).

Lumber produced in northern Mexico is similar to that produced in California and in the inland empire, and is sold and used in competition therewith. *Id.* (737).

Port:

It was admitted by defendants that the element of port competition is lacking, as very little burlap moves through Galveston and competition of Atlantic coast ports is not felt in Texas. *New Orleans Joint Traffic Bureau v. A. & S. Ry. Co.* 444 (447).

Potential:

On Kentucky and Ohio rivers. *Axton v. K. & M. Ry. Co.* 389 (391).

May exist via a route in absence of any tonnage whatever. *Ocean S. S. Co. of Savannah*, 422 (425).

Potential water competition does exist at Memphis on all commodities, but that competition is not at all probable for cottonseed products involved, except perhaps for linters. *Brownsville Cotton Oil & Ice Co. v. C., R. I. & P. Ry. Co.* 503 (505).

Water competition at Frankfort, Ky., appears to be as potent on westbound traffic as on eastbound traffic. Rates from Shelbyville to Louisville are not unjustly discriminatory as compared with rates from Frankfort to Louisville. *Shelbyville Business Men's Assn. v. L. & N. R. R. Co.* 675 (680).

COMPETITION Continued.

Rail and Boat Lines:

As to a large volume of through traffic eastbound the Lehigh Valley R. R. does or may "strive" in the interest of all-rail routes for traffic which the lake line might otherwise secure. Lake Line Applications Under Panama Canal Act, 77 (80).

Respondents by participating with other rail and boat lines in joint rates and fares do or may compete with their steamship company operating between Flavel, Oreg., and San Francisco; but continuance of service permitted. Steamship "Great Northern," 260 (263).

With respect to traffic between c. f. a. territory and Savannah it is clear that the possibility of competition does exist between the ocean-and-rail route and all-rail route. Ocean S. S. Co. of Savannah, 422 (425).

Contention that competition contemplated by amendment to act is not competition of routes, but direct and parallel competition between rails of owning carrier and its boat line, not sustained. Id. (426).

Continued ownership and operation of steamship company by the Central of Georgia, as at present conducted, will neither exclude, prevent, nor reduce competition on routes by water. Id. (429).

It does not appear of record that there is or may be competition between petitioners and steamship company in its operation between Miami, Fla., and Nassau, Bahama Islands; but the F. E. C. Ry. does or may compete with the steamship company for traffic moving between Jacksonville and Key West. Peninsular & Occidental S. S. Co. 432 (434).

To concede that possibility of competition depends on volition of water carrier would defeat the evident purpose of the amendment to restore and maintain competition in instances where rail carriers had secured control of a potentially competitive water line. Id. (436).

The F. E. C. Ry. may or does compete with steamship company for traffic moving between Jacksonville and Havana, and the A. C. L. for traffic moving between points north of Jacksonville and Key West and Havana. Id. (437).

Petitioner may or does compete with its boat, as at present operated, between Tampa and St. Petersburg, Fla. The Boat "H. B. Plant," 453 (455).

Competition means something more than an occasional movement via a rail line which parallels a water line, where the rail line operates at a serious disadvantage in that it does not and can not offer rates and service on anything like equal terms with water line. Whether or not there would be a normal, active competition between rail line and water line if operating independently is the best practical test of competition. S. P. Co. Ownership of Oil Steamers, 525 (536).

The act contemplates encouragement of such competition by divorcing water line from rail carrier when it is found that water carrier is being used to stifle competition, or is not being operated in best interests of the public. Id. (536).

Competition between petitioner and oil company's steamers is not such a probable, potential competition as is contemplated by the act. Id. (537).

Railroad.

Voluntary reduction of refrigeration rate to meet carrier competition does not establish unreasonableness of previous rate. Wattam v. N. P. Ry. Co. 101 (102).

Competitive influence of the Kansas City Southern, while felt throughout entire yellow-pine blanket territory by carriers operating through eastern gateways, is strongest in territory from Ashdown, Ark., southward. Lumber to Wisconsin Points, 198 (200).

COMPETITION--Continued.

Railroad--Continued.

Practice of absorbing switching charges at Manitowoc on across-lake grain is the result of railroad competition at Milwaukee and Chicago. Grain from Manitowoc, Wis., 549 (553).

Railroad competition and potential water competition on Mississippi River are said to compel present rates on cottonseed products from Memphis. Brownsville Cotton Oil & Ice Co. v. C., R. I. & P. Ry. Co. 503 (505).

Rates from St. Paul, Minneapolis, and Duluth to Chicago are doubtless influenced by railroad and market competition, but there is no showing that rates from Couderay and Park Falls to southern Illinois are borne down by the same influence. Bekkedal v. C., St. P., M. & O. Ry. Co. 611 (613).

It is within the option of the longer line either to meet the rate of the shorter or to retire from participation in the traffic. Bituminous Coal Rates to the Southeast, 652 (663).

Competition between Louisville and Cincinnati for Kentucky markets involved has always been severe. Competition between the L. & N., C., N. O. & T. P. Ry., and lines running east from Louisville discussed. Shelbyville Business Men's Assn. v. L. & N. R. R. Co. 675 (678, 681).

Adjustment of rates in central Kentucky is result of competitive conditions which neither of the parties defendant herein is able to control. Traffic Bureau of Knoxville, Tenn., v. C., N. O. & T. P. Ry. Co. 687 (691).

There is keen competition between carriers serving the Lehigh, Nazareth, and New Jersey districts and those serving the Hudson River district. Cement to Long Island Points, 694 (695).

Cairo and Paducah are river crossings substantially alike, and competition between the Illinois Central and the Mobile & Ohio can not justify unequal treatment of these two substantially similar trading communities. Paducah Board of Trade v. C., B. & Q. R. R. Co. 743 (756).

Water:

Flour shipped from Pacific coast via Panama Canal distributed in official classification territory in competition with small miller. Official Classification Ratings, 166 (185).

Carriers admit that the alleged normal adjustment, which would rate wheat flour, buckwheat flour, and corn flour the same, should obtain on account of competition via the Panama Canal. Rates on Buckwheat and Corn Flour, 361 (365).

The Great Kanawha and Ohio Rivers are said to afford a continuous water route from Charleston, W. Va., to Louisville, Ky., which is available during practically all seasons of the year. Axton v. K. & M. Ry. Co. 389 (391-392). Rates from Louisville to Frankfort said to be depressed by. Broom Corn to Frankfort, Ky., 485 (486).

Rate to Evansville, Ind., said to be depressed by, on Mississippi and Ohio Rivers. Id. (488).

Defendants fail to show that Snow Lake and Arkansas City, Ark., are actually water competitive points. Indiana Veneer & Lumber Co. v. St. L., I. M. & S. Ry. Co. 579 (581).

Protestant took the position that respondents should not be permitted to abandon their policy of meeting rail-and-water competition. The Commission has held, however, that if a carrier elects to discontinue this practice at any point and increase its rates, the only question to be determined is whether or not the increased rates are just reasonable, and proper. Coal to Rhode Island Points, 650 (651).

COMPETITION—Continued.**Water—Continued.**

It is shown that actual and potential water competition, which has existed for years, is responsible for lower rates to Frankfort than to Shelbyville, Ky. *Shelbyville Business Men's Assn. v. L. & N. R. R. Co.* 675 (678).

Ninety per cent of cement shipped from Hudson River mills to Long Island Railroad stations moves by water to Long Island City. Cement to Long Island Points, 694 (695).

Effect of, upon rates on bicycles from eastern points to the Pacific coast discussed. *Pacific Motor Supply Co. v. A., T. & S. F. Ry. Co.* 703 (705).

Fact that points are situated on and adjacent to Green Bay, Lake Michigan, and therefore open to direct water competition, referred to. *Class Rates from Michigan and Wisconsin Points*, 739 (741).

There is no definite testimony to effect that boat lines are extensively engaged in transporting from Cairo and Paducah to Mississippi Valley territory and southeastern territory the commodities distributed by Cairo and Paducah jobbers. *Paducah Board of Trade v. C., B. & Q. R. R. Co.* 743 (750).

COMPETITIVE CONDITIONS.

Low plane of rates in central Kentucky caused by the construction of the Cincinnati Southern, discussed. *Shelbyville Business Men's Assn. v. L. & N. R. R. Co.* 675 (678); *Traffic Bureau of Knoxville, Tenn., v. C., N. O. & T. P. Ry. Co.* 687 (690).

Carrier contends that its rates to Cairo are depressed by severest competitive influences; but Commission does not agree that rate to Cairo is unduly low, and there appears to be no reason for permitting the Rock Island to charge a higher rate to Paducah than to Cairo. *Paducah Board of Trade v. I. C. R. R. Co.* 719 (723, 724).

COMPLAINT. See also FORMAL COMPLAINT.

The apprehension that comparatively slight differences in distance in favor of St. Louis as compared with St. Paul may result in a complaint from St. Louis is a mere possibility and can not be said to afford justification for proposed changes. *Colorado Class Rates*, 203 (211).

Certain allegations withdrawn at hearing and complaint amended. *Stearns & Culver Lumber Co. v. L. & N. R. R. Co.* 376 (377).

In so far as present complaint seeks recovery of amounts in excess of \$3 per car it broadens scope of informal case and creates a new and independent cause of action not presented within statutory period. *Hygienic Ice Co. v. C. & N. W. Ry. Co.* 382 (387).

CONCESSIONS.

On ferry properties. *New York-Jersey City Ferry Rates*, 103 (110).

An excessive division or allowance given by a connecting line to industrially owned line here involved would be an unlawful concession. *Moshassuck Valley R. R. Case*, 566 (568).

CONCURRENCE.

Defendants state that former rate of 15.5 cents to points beyond Raceland, La., upon basis of which reparation is asked, was published without knowledge or consent of M. L. & T. R. R. & S. S. Co. Complaint dismissed. *Cape Girardeau Portland Cement Co. v. St. L. & S. F. R. R. Co.* 538 (539).

CONFISCATORY RATES.

A rate which is merely nonconfiscatory may fall short of being entirely just and reasonable. *Holmes & Hallowell Co. v. G. N. Ry. Co.* 627 (635).

CONGESTION.

There is no congestion of coal cars in Detroit terminals at the present time, and the possibility of a recurrence of previous conditions has been minimized by the construction of extensive yards which are now available. *Detroit Recog- nizing Case*, 274 (279).

CONSIGNOR AND CONSIGNEE.

Consignees paid charges but deducted them in subsequent settlements with complainants. Complainants charged them back to their vendors, and are denied reparation. *Oden & Elliott v. S. A. L. Ry.* 345 (348-349).

In absence of a privity of interest, the filing of a claim by consignee does not constitute a filing on behalf of consignor; and claim as to certain of consignee's shipments is barred. *Traffic Bureau, Sioux City Commercial Club v. A. & N. R. R. Co.* 353 (354, 355).

Facts and circumstances surrounding payment of charges on one shipment emerged in commercial transactions between consignor and consignee as to be able to afford a proper basis for an award to consignee. *Id.* (356).

CONTAINERS.

Weight density of different sizes of beer containers varies. Weight density of barrels considered. *Official Classification Ratings*, 166 (174, 175).

CONTRABAND.

As bauxite is contraband, its importation has been virtually cut off by the European war. *1915 Western Rate Advance Case--Part II*, 114 (142).

CONTRACTS. See also JURISDICTION.

Existence of contracts for delivery of timber to mines in Arizona furnishes no reason for denying to complainant reasonable and nondiscriminatory rates. *McCormick & Co. v. S. P. Co.* 234 (235).

Commission not concerned with conditions of purchase and sale agreed upon between parties except as they may have shifted from one to the other a part or all of transportation charges. *Hygienic Ice Co. v. C. & N. W. Ry. Co.* 384 (388).

COOPERAGE STOCK. See INDUSTRIES.**COST OF LIVING.**

Railroads, like other industries and in common with their employees, have felt the rising cost of living. *Western Passenger Fares*, 1 (11).

COST OF PRODUCTION.

In determining whether there is undue discrimination in rates from competing mines to a common market the Commission can not undertake to equalize differences in cost of production, either natural or artificial. *Bituminous Coal Rates to the Southeast*, 652 (658).

COST OF ROAD AND EQUIPMENT.

Ratio of maintenance expenses to. *Western Passenger Fares*, 1 (7).

Comparison of increase in net cost of road and equipment with increase in operating income. *Table No. 7. Net cost of road and equipment and operating income. Table No. 8. Id.* (8).

Book cost of road and equipment devoted to passenger service. *Id.* (28).

COST OF SERVICE.

Increased cost of service due to greater costs for labor, materials, and taxes not offset by corresponding economies which are practicable in operation, is entitled to consideration. *Western Passenger Fares*, 1 (41).

Allocation of property and cost of service as between freight and passenger business is to an extent feasible. *Id.* (42).

The fact that in a switching district all carload freight is not received or delivered at the same point and in the same manner presupposes variations in cost of service. *Boardman Co. v. S. P. Co.* 81 (85).

COST OF SERVICE—Continued.

Out of pocket cost of handling ice in special trains by the C., St. P. & S. S. M. Ry., and line-haul cost of handling all traffic on the C., M. & St. P. considered, but the increased rate on ice in box cars is not justified. *Eagle Ice Co. v. C., M., & St. P. Ry. Co.* 250 (253, 258).

Existing commutation fares of the P., B. & W. not only do not appear to cover total cost of carrying commutation traffic, but not even such items of cost as can be directly assigned to that traffic. *Mace v. P. R. R. Co.* 268 (271).

Service within Detroit switching district is more expensive than the service of reconsignment to points beyond for which a charge of \$2 per car has been approved. *Detroit Reconsigning Case*, 274 (278).

In so far as industrial line serves plant in interplant switching and other purely plant service the cost of such service and investment in facilities used exclusively to perform that service must be excluded in calculating cost of service to and from trunk lines. *Chicago, West Pullman & Southern R. R. Co. Case*, 408 (415).

Cost of transporting oil by rail from Port Costa to Portland would be approximately \$2.50 per ton, as compared with a cost of \$1.20 per ton via steamers. *S. P. Co. Ownership of Oil Steamers*, 525 (533).

Reduced by construction of a new line. *Bituminous Coal Rates to the Southeast*, 652 (656).

CREDIT.

Practice of giving a long-time credit to proprietary industries constitutes an unjust discrimination against independent shippers, who are required to pay their charges promptly. *Moshassuck Valley R. R. Case*, 566 (568).

CROSSTING IN TRANSIT. See TRANSIT PRIVILEGES.

CROSS-COUNTRY COMPETITION. See COMPETITION (CROSS-COUNTRY).

CUT OFF.

Shelby cut-off, constructed in 1896, connects Shelbyville, Ky., with Christiansburg and forms part of a continuous line from Louisville east. For through traffic is used almost exclusively by the C. & O. under contract. *Shelbyville Business Men's Assn. v. L. & N. R. R. Co.* 675 (683).

DAMAGED COTTON.

Charges on damaged cotton shipped in sacks from Greenville, Tex., to Galveston, Tex., held not within jurisdiction of Commission. *Kempner v. M., K. & T. Ry. Co.* 396.

DAMAGES.

Charges on lumber from Bayou Sale and Baldwin, La., to milling points and reshipped to interstate destinations found unlawful to extent they exceeded charges which would have accrued on basis of refunds permitted by the tariff. *Chicago Lumber & Coal Co. v. M. L. & T. R. R. & S. S. Co.* 73 (74).

Cast-iron pipe and fittings from Anniston and Bessemer, Ala., to El Segundo, Cal., sold f. o. b. destination, and complainant does not appear to have been damaged by discrimination. *U. S. Cast Iron Pipe & Foundry Co. v. S. Ry. Co.* 75 (76).

When carriers have reduced rates of their own volition or in compliance with orders it does not necessarily follow that reparation should be awarded on shipments which moved under preexisting rates; and Commission has frequently declined to award reparation when rates reduced have been in effect for long periods and reduction applied throughout a large territory and affected shippers not parties to the proceedings. *Boardman Co. v. S. P. Co.* 81 (86, 87).

Reparation neither asked nor awarded in *Pacific Coast Switching Cases* and is denied herein. *Id.* (87).

DAMAGES—Continued.

Awarded on account of unlawful through charges resulting from different rules and minima applicable in trunk line and c. f. a. territories, and nonapplication of the "two-for-one" rule to shipments loaded on flat cars. *Minneapolis Threshing Machine Co. v. M. & St. L. R. R. Co.* 92 (95, 97).

Commission empowered to award reparation only for violations of the act. No violation can be predicated upon fact that carrier's agent negligently permitted use of pens for infected cattle causing complainant to ship from another point. *Criswell v. W. F. & N. W. Ry. Co.* 97 (98).

Complainant water line asks reparation believing that if former joint rates were reestablished shippers could make proof as to their claims; but shippers are not parties to this proceeding, and have no claims properly before Commission. *Black & White River Transp. Co. v. M. P. Ry. Co.* 244 (249).

As to shipments of ice sold f. o. b. origin there is no showing that complainants were damaged. Reparation awarded on all other shipments. *Eagle Ice Co. v. C., M. & St. P. Ry. Co.* 250 (259).

Upon rehearing, finding in original report that complainants were entitled to reparation on lumber from Star, Cal., to Verdi, Nev., and other points, reversed because of failure to make proper showing of damage on particular shipments upon which reparation is claimed. *Worn v. B. & L. R. R. Co.* 283

Overcharges on shipments of petroleum tailings upon which fuel-oil rate was assessed must be refunded. *National Petroleum Assn. v. A., T. & S. F. Ry. Co.* 287 (294).

Rate charged on refined petroleum and products from Vinita, Okla., to Winter Mo., violated the fourth section, and reparation awarded. *Milliken Refining Co. v. M., K. & T. Ry. Co.* 295.

No injury or damage is shown to have resulted from discriminatory rates on apples to Sioux City. *Public Service Commission of Missouri v. Wabash R. R. Co.* 297 (301).

Claims on account of shipments on which complainants bore freight charges should be promptly paid. Claims on account of shipments sold f. o. b. mills are invalid; on account of shipments to Allentown, Pa., must be denied because rates to Allentown were not involved in previous cases. *Oden & Elbert v. S. A. L. Ry.* 345 (347).

Partly entitled to recover is he who has either by himself or by another paid and borne freight charges, irrespective of title to property shipped. *Id.* (348).

It is elementary that an undisclosed principal of a nominal shipper can maintain an action at law against a carrier for damages to a shipment in transit. *Id.* 348

Consignees paid charges but deducted them in subsequent settlements with complainants, who in turn charged them back to vendors. Neither carrier's ownership, credit alleged, nor assurance of complainants' intention to distribute among the various vendors any funds received by them would warrant an award to complainants. *Id.* (348, 349).

Proof of undue discrimination is not sufficient of itself to justify an award for damage, which is not presumed but must be proven; but even where actual damage is shown the extent thereof is not necessarily to be measured by the difference in rates which constitute the discrimination, but it may be greater or less or the same in amount as the rate difference. In any event the amount of pecuniary loss must be established by such evidence as would be required to recover in a suit at law. *Manufacturers & Merchants Assn. v. A. & A. R. R. Co.* 350 (351).

Filing of claims by consignee did not stop running of statute of limitations as to consignor. It is held that consignees are without interest in charges paid and

DAMAGES--Continued.

- may not lawfully be awarded reparation. Reparation awarded consignor upon shipments not barred by statute. *Traffic Bureau, Sioux City Commercial Club v. A. & S. R. R. Co.* 353 (354-356).
- Original report modified. Reparation awarded on shipments to New York via route in connection with terminal company on basis of defendants' rates over other routes. *East Jersey R. R. & T. Co. v. C. R. R. Co. of N. J.* 357 (359).
- Denied because voluntary reduction of a rate is not sufficient evidence that prior rate was unreasonable. *Omaha Grain Exchange v. M. & O. R. R. Co.* 363 (364).
- Awarded on live hogs from points in Iowa to Chicago on basis of present rate to complainant's plant, which is the Chicago rate plus \$2 per car for delivery. *Omaha Packing Co. v. C., M. & St. P. Ry. Co.* 378 (381).
- That complainant received benefit of reduction in price and further recouped itself by increasing its prices to certain retailers can not deprive it of right of recovery if it be shown that it paid and finally bore charges in controversy. *Hygienic Ice Co. v. C. & N. W. Ry. Co.* 384 (387).
- The one entitled to reparation due is party to contract of carriage who has been damaged by paying and finally bearing charges. Damages suffered by intervenor not attributable to acts of carriers and he is not entitled to recover. *Id.* (388).
- Reparation awarded complainant on account of unreasonable and discriminatory switching charges on ice at Chicago. *Id.* (388).
- Awarded on slag from Bessemer, Ala., to McRae, Ga., on basis of subsequently established joint rate. *Empire Cotton Oil Co. v. A., B. & A. R. R. Co.* 394 (395).
- Record does not establish damage to complainant as result of discrimination found, and no reparation will be awarded. *National Pickle and Canning Co. v. C., M. & St. P. Ry. Co.* 403 (404).
- Awarded on liquid asphaltum in tank cars from Paraffin, Cal., to Chicago Heights, Ill., using estimated weight of 7.9 pounds per gallon instead of 8.6 pounds. *Standard Paint Co. v. S. P. Co.* 405 (407).
- Question of reparation deferred pending determination of the issue of reasonableness. *Markle Co. v. L. V. R. R. Co.* 441; *Plymouth Coal Co. v. P. R. R. Co.* 457; *Red Ash Coal Co. v. C. R. R. Co. of N. J.* 460.
- Not such a showing as justifies an award of reparation. *New Orleans Joint Traffic Bureau v. A. & S. Ry. Co.* 444 (448).
- Rate relationship herein condemned in part was not the sole cause of complainant's disadvantage. Reparation denied. *Brownsville Cotton Oil & Ice Co. v. C., R. I. & P. Ry. Co.* 503 (506).
- Awarded on logs from Boyd, Ala., to Chattanooga, Tenn., on account of an unreasonable component of the combination rate. *McLean Lumber Co. v. A., T. & N. Ry.* 520 (522).
- Awarded on account of unreasonable factor of through rates on coal from Pennsylvania and West Virginia mines to Gladstone, Mich. *Davis v. M., St. P. & S. S. M. Ry. Co.* 523 (524).
- Awarded on wooden railroad ties from St. Louis to Chicago which moved under joint rate in excess of intermediates. *Taylor & Co. v. Wabash R. R. Co.* 540.
- Awarded on motorcycle upon which an unreasonable rate was assessed, although defendant questions complainant's right to reparation on ground that complainant added to selling price of motorcycle a sum equal to the freight charges. *Pilcher Hdwe. Co. v. C. & N. W. Ry. Co.* 542.
- Awarded on account of admittedly unreasonable charges on fresh fish from Celilo, Oreg., to New York, N. Y. *Taffe v. Am. Exp. Co.* 544 (545).
- Awarded on account of switching charges collected without tariff authority. *Fish Mfg. Co. v. N. Y., N. H. & H. R. R. Co.* 547.

DAMAGES—Continued.

Awarded on account of unreasonable rate on lumber from Spring Hope, N. C., to Yardley, Pa., which violated aggregate of intermediates' rule. *Elm City Lumber Co. v. A. C. L. R. R. Co.* 571.

Awarded on account of unreasonable rate on logs. *Hosafous v. P., C., C. & St. L. Ry. Co.* 575.

Contention that complainant was not damaged to extent of difference between rate paid and rate found reasonable for the reason that complainant increased price of its stone during period higher rates were in effect is without merit, and reparation is awarded. *Birdsboro Stone Co. v. P. R. R. Co.* 577-578.

Awarded on scrap iron from Houston, Tex., through New Orleans, La., to Chicago, Ill., on basis of lower combination. *Joseph Iron Co. v. M. L. & T. R. R. & N. Y. Ry. Co.* 591.

Awarded on account of unreasonable rates on lumber from Clouderay, Wis., to Boscobel and other Wisconsin points. *Bekkedal v. C., St. P., M. & O. Ry. Co.* 611 (614).

Awarded on account of demurrage charges on privately owned empty box cars assessed without tariff authority. *General Equipment Co. v. A. C. L. R. R. Co.* 622.

Awarded on ice from Corry, Pa., to Jamestown, N. Y., on basis of subsequently established rate. *Chautauqua Refrigerating Co. v. Erie R. R. Co.* 625.

To require refunds to be paid on interstate movements would be equivalent to making the Minnesota basis of rates applicable to past interstate shipments, and evidence does not warrant such an order. *Holmes & Hallowell Co. v. G. N. Ry. Co.* 627 (645).

Denied in view of the nature of the proceeding. *Bituminous Coal Rates to the Southeast*, 652 (668).

Right to reparation not established. *Arizona Stores Co. v. A., T. & S. F. Ry. Co.* 669-670.

Awarded on account of unreasonable rates charged on motorcycles from eastern points to the Pacific coast. *Pacific Motor Supply Co. v. A., T. & S. F. Ry. Co.* 703.

Question raised relative to the effect on the retail vendor's right to reparation of the arbitrary addition of \$15 to the retail price of motorcycles on the Pacific coast concluded adversely to defendants. *Pacific Motor Supply Co. v. A., T. & S. F. Ry. Co.* 703-705.

DEFICIT.

Statement in case at bar shows that ferries were operated at a deficit during fiscal year 1913. Annual report shows profit. *New York-Jersey City Ferry Rates*, 103 (113).

DELIVERY.

Where mine is located outside of a district or group, but takes its coal across the boundary where its tipple is located and there makes delivery to carrier. Held, that place where coal is delivered by mine to railroad should determine rate which is to be applied. *Pitt Gas Coal Co. v. P. R. R. Co.* 240 (242).

In cases where delivery of less than an entire shipment is tendered, consignee has alternative of either releasing equipment by unloading portion offered for delivery or of paying charges prescribed for its detention. *Darling & Co. v. P., C., C. & St. L. Ry. Co.* 401 (402).

DEMURRAGE.

Demurrage charges accruing at point of origin due to agent's refusal to forward car as directed by shipper held unlawful, as shipper was in no way responsible for the delay. *Beckman Lumber Co. v. M. P. Ry. Co.* 400.

DEMURRAGE—Continued.

Two cars of fertilizer covered by single bill of lading, consignee deferred unloading first car until second car arrived, Held, that a reasonable additional charge may lawfully be imposed as a penalty per car for purpose of conserving equipment. *Darling & Co. v. P., C., C. & St. L. Ry. Co.* 401 (402).

Former case in which demurrage regulations as to anthracite coal awaiting transshipment at Perth Amboy, N. J., were held reasonable is controlling here. *Markle Co. v. L. V. R. R. Co.* 441 (442).

Following *Plymouth Coal Co.* case, 36 I. C. C., 76, regulations governing anthracite coal awaiting transshipment at or near Elizabethport and Port Johnston, N. J., found reasonable. *Red Ash Coal Co. v. C. R. R. Co. of N. J.* 460 (462).

Some definite period at end of which the average detention must be obtained and a balance struck must be prescribed. *Id.* (462).

Charges on car of lumber at Detroit, Mich., not found unlawful. Shipment was routed care of a nonexistent carrier for delivery, and evidence fails to establish that complainant's disposition orders were received by the line-haul carrier which finally ascertained from an intermediate carrier name of firm for whom shipment was intended. *Heyser Lumber Co. v. K. & W. V. R. R. Co.* 609 (610).

Tariff of freight storage charges did not include empty cars transported as freight nor did it publish "track storage" charges of any character; and there was therefore, no authority for assessment of demurrage charges on three privately owned empty box cars, shipped from Hobson, Ohio, held at Alcolu, S. C., because consignee refused to accept delivery until certain repairs were made. *General Equipment Co. v. A. C. L. R. R. Co.* 620.

Notice by complainant to defendant relative to disposition of car of lumber shipped from Noma, Fla., to West Point, Ga., in time to prevent accrual of demurrage, is not established. Demurrage charges not collected unlawfully. *Standard Lumber Co. v. A. & W. P. R. R. Co.* 716.

DENSITY OF TRAFFIC.

Passenger miles per mile of road. Table No. 18. *Western Passenger Fares*, 1 (32). Notably greater in territory to the east than in territory where fare increases are proposed. *Id.* (44).

Traffic density to Salt Lake City is less and cost of operating greater than to San Francisco. *Rates on Tin Cans and Other Commodities*, 360 (362).

DEPRECIATION.

Accrued depreciation should be deducted from original cost or inventory value of the property for purpose of arriving at a proper basis for a return. *New York-Jersey City Ferry Rates*, 103 (111).

DEPRESSION.

There has been an unprecedented depression in lumber business in territory involved during past few years. *Black & White River Transp. Co. v. M. P. Ry. Co.* 244 (245).

DESTINATION. See F. O. B. DESTINATION.**DEVICE.**

Should a trackage arrangement with an industrial line prove unprofitable to trunk lines or hinder them in performance of public duties it must be looked upon as "a device condemned by the act." *Chicago, West Pullman & Southern R. R. Co. Case*, 408 (417).

DIFFERENTIALS.

Koshkonong district will enjoy a uniform differential of 4 cents under St. L. & S. F. points south of Monett, Mo., to eastern points. *Peaches from Missouri Points*, 89 (90).

Of 3.2 cents; Milwaukee over Chicago, not found to be excessive. *Lumber to Wisconsin Points*, 198 (202).

DIFFERENTIALS—Continued.

Record in its entirety indicates that the really potent factor in decreased tonnage is the decreased differential. Rates via Rail-and-Lake Routes. 302 (310)
 A suitable differential to a line requiring a differential is defined as one determined upon the character and service of the route as well as from a consideration of what in the judgment of the carriers would give to such a line an equitable share of the business. Id. (315).

Tremendous extent of absorptions out of ocean-and-rail rates indicates strongly the need of protection of lake routes and their differentials. Id. (316).

Upon rehearing, Held, that between eastern points and California terminals etc. buckwheat and corn flour should not be rated higher than wheat flour. *Paine on Buckwheat and Corn Flour*. 364 (366).

From New York to St. Louis and points west of Mississippi River ocean-and-rail rates are differentials under all-rail rates; similarly there are differentials in ocean-and-rail rates to southeastern territory as far west as a line through Chattanooga and Mobile. *Ocean S. S. Co. of Savannah*. 422 (426).

Of not more than 5 cents in rates on burlap bags from New Orleans to Dallas over import rates on burlap, prescribed. *New Orleans Joint Traffic Bureau v. A. & S. Ry. Co.* 444 (448).

Rates from Kosmosdale, Ky., to c. f. a. points may reasonably be somewhat higher than those from Sellersburg, Ind., because of greater distance and cost of handling cars across Ohio River. *Kosmos Portland Cement Co. v. I. C. R. R. Co.* 449 (452).

No material changes in transportation conditions shown that would warrant the condemnation of the differential on crushed stone over sand and gravel from Wisconsin points to Chicago previously prescribed. *Crushed Stone from Wisconsin Points*. 593 (595).

Rates on potatoes from Wisconsin and other producing territory to Topeka, Kans., should not exceed rates to Kansas City by more than 4 cents. *Topeka Traffic Assn. v. A. & W. Ry. Co.* 598 (601).

No reason shown for disturbing the relationship in rates as between Coal Creek and Virginia mines to points in Georgia and Florida territory which are in the present 25 and 35 cent differential zones. *Bituminous Coal Rates to the Southeast*. 652 (656, 660).

A differential of 10 cents a ton against the Dante field and in favor of the Coal Creek field requires for its justification some other grounds than cost of service or difference in distance. Id. (657).

Differential in favor of the Coal Creek district eliminated at Spartanburg, S. C., by a reduction in the rates from Virginia mines. Id. (659).

Complexities growing out of the geographical location of many carriers serving Carolina territory are such as to make it necessary to proceed with caution in laying down any hard and fast differential basis. Id. (665).

Increase in the differential over rates from Chicago on salt from Michigan producing points to Oklahoma, in so far as it exceeds 2½ cents, not justified. *Maximum differential of 2½ cents prescribed for future. Salt to Oklahoma*. 680 (702).

Rates from Ohio producing points should not exceed rates from producing points in Michigan by more than 1 cent per 100 pounds, as in the past. Id. (702).

Carriers expected to readjust their present joint through rates to Green Bay shore points by publishing in lieu thereof rates no higher than joint rates to Manitowish or Milwaukee plus the former differentials of 6, 5, 4, 3, 2, and 2 cents on the six classes, respectively. *Class Rates from Michigan and Wisconsin Points*. 739 (741).

Differentials representing the advantage in rates which Cairo, Ill., has over Paducah, Ky., shown. *Paducah Board of Trade v. A. & S. Ry. Co.* 760 (763).

DINGLEY TARIFF. *See* **TARIFF LAWS.**

DIRECT LINES.

Grain shippers in c. f. a. territory, etc., are entitled to reasonable rates by direct lines. *Export Grain Case*, 190 (192).

DIRECT TRAIN COST.

Study of direct cost of operation of passenger business on the O. & N. W. and O., R. I. & P. Rys. for a short period, discussed. *Western Passenger Fares* 1 (29).

DISCRIMINATION.

The ascertainment of a present undue discrimination does not raise a conclusive presumption of unreasonableness of such discrimination in the past. *Manufacturers & Merchants Asso. v. A. & A. R. R. Co.* 350 (351).

Practice of extending a long-time credit to proprietary industries constitutes an unjust discrimination against independent shippers, who are required to pay their freight charges promptly. *Moshassuck Valley R. R. Case*, 566 (568).

Testimony as to alleged unjust discrimination in grain rates is meager and unsatisfactory, and affords no adequate basis for a finding that unjust discrimination exists. *Holmes & Hallowell Co. v. G. N. Ry. Co.* 627 (636).

DISTANCE.

Differences in distances in favor of St. Louis, while not negligible, are insufficient to justify breaking up the Colorado common-point group and increased rates from St. Paul to common points south of Denver. *Colorado Class Rates*, 203 (209, 211).

Rates from Dunbar, W. Va., to Midway and Frankfort, Ky., made in combination on Louisville and Lexington, are unreasonable, because rates to those points do not bear a reasonable relation to rates for long hauls to basing points. *Axton v. K. & M. Ry. Co.* 389 (393).

Distances for which cars are switched vary. *Indiana Northern Railway Case*, 491 (495).

Difference in distance to Topeka and to Kansas City is small in comparison with total distances from Wisconsin, Minnesota, and North Dakota territory involved. *Topeka Traffic Asso. v. A. & W. Ry. Co.* 598 (600).

Distances from Louisville to Lexington and Georgetown do not greatly exceed distances from Cincinnati. *Shelbyville Business Men's Asso. v. L. & N. R. R. Co.* 675 (678).

From Louisville to Shelbyville is so much less than distances to Georgetown, Midway, Lexington, and Paris, Ky., that rates to and from these points should be observed as maxima to and from Shelbyville. *Id.* (683).

There can be no question of the impropriety of measuring distances over a route which has been closed for more than two years. *Paducah Board of Trade v. I. C. R. R. Co.* 719 (721).

The Supreme Court has held that it does not follow, as a matter of law, that rates should be the same for the same distance over two different roads, and that the per mile ratio of rates can not be regarded as a necessary standard. *Big Basin Lumber Co. v. S. P. Co.* 730 (734).

DISTURBANCE OF ADJUSTMENT.

Breaking up of the long-established Colorado common-point group and increased rates proposed to common points south of Denver not justified. *Colorado Class Rates*, 203 (209, 211).

DIVIDENDS

Paid on capital stock of the Indiana Northern. *Indiana Northern Railway Case*, 491 (495).

DIVISION OF EXPENSES. *See* **SEPARATION OF EXPENSES.**

DIVISION OF TONNAGE.

Lake Lines division of tonnage as between package and bulk freight. *Appendix Rates via Rail-and-Lake Routes*, 302 (340).

DIVISIONS. *See also* INDUSTRIAL RAILWAYS.

While the Lehigh Valley has a lake line it has a voice in what the all-rail rate should be and is in a position to demand large divisions. *Lake Line Applications Under Panama Canal Act*, 77 (79).

Disagreement between carriers as to divisions of rates is of itself no justification for an increase in rates. *Coal to Kentucky Points*, 194 (197).

It is not just to Commission to set its machinery in motion and to create a situation compelling a hearing and making of a record only to develop fact that there is a controversy between carriers respecting divisions. They should, in such circumstances, submit the matter for adjustment. *Coal from Toluca, Ill* 230 (231).

It is deemed desirable that all carriers subject to the act be required to file their divisions of joint rates applicable on railway fuel coal, and that they be required further, when changes are made in such divisions, to file a statement of facts relied upon as justification for same. *Divisions of Joint Rates on Railway Fuel Coal*, 265 (267).

Lake lines have practically no voice in naming divisions of rates. *Rates via Rail-and-Lake Routes*, 302 (307).

Different treatment accorded to controlled boat from that accorded independent boat with an independent traffic official protecting its divisional interests not justified. *Id.* (308).

Commission may fix divisions to be accorded industrial line. *Chicago, West Pullman & Southern R. R. Co. Case*, 408 (415).

Carriers granting divisions to the West Pullman will be expected to revise their joint rate or switching arrangements and to file complete and specific statement of arrangement entered into. *Id.* (420).

Steamship company has been content to remain a party to a basis of divisions the effect of which limits it to working arrangements with one carrier. Such an attitude is not conducive to best interest of the public. *Peninsular & Occidental S. S. Co.* 432 (440).

Carrier's divisions are unremunerative, but increased rates can not be justified on that ground. *Grain from Manitowoc, Wis.*, 549 (551).

Maximum allowance of \$1 per car for switching prescribed. Division for movements to or from industries and public sidings at Palmerton, Pa., should be confined to a reasonable switching charge. *Chestnut Ridge Railway Case*, 566 (563).

Present divisions of through rates accorded the Moshassuck Valley are ample but not excessive. Interested carriers, however, are expected to apply the principles and rules laid down, and if necessary to revise their divisions and allowances accordingly. *Moshassuck Valley R. R. Case*, 566 (570).

DOMESTIC RATES. *See* CANCELLATION.

DUNNAGE

Tariffs made no provision for dunnage on logs in carloads, and record does not disclose that the absence of such provision resulted in assessment of unreasonable charges. *Indiana Veneer & Lumber Co. v. St. L., I. M. & S. Ry. Co.* 579 (581).

Inside door protection was not included in the provision of official classification for an allowance of 500 pounds per car for wooden dunnage, blocking, or bracing material. Weight of these doors has always been included in gross weight of shipment and practice is not unlawful. *Keystone Wood Co. v. P. R. R. Co.* 622 (624).

EARNINGS. *See also* **AVERAGES.**

On agricultural implements under proposed rates and earnings on machinery from Chicago compared with earnings from St. Louis to same destinations. Table No. 2. 1915 Western Rate Advance Case—Part II, 114 (124).

Statement of carload earnings from Chicago to Louisiana, agricultural implements, etc. *Id.* (154).

Comparison of car-mile and ton-mile earnings on furniture with those on other commodities from Kansas City. *Id.* (157).

ECONOMIES.

Possible economies to render passenger service profitable. *Western Passenger Fares*, 1 (34).

Neither competition nor unreasonable demands of the public must be made the excuse for waste and extravagance. *Id.* (34).

Conditions under which passenger service is performed do not admit of all corresponding economies in operation that have been effected in freight service. *Id.* (41).

ELKINS ACT.

Was held inapplicable to continuous transportation of goods in bond from a foreign country through the United States to a foreign country. *Canales v. G., H. & S. A. Ry. Co.* 573 (574).

EMPTY MOVEMENT.

All ice cars move back empty from Chicago to originating points. *Eagle Ice Co. v. C., M. & St. P. Ry. Co.* 250 (252).

EQUALIZING RATES.

Increased rates which correct a substantial inequality between mills located on the Tremont & Gulf and Louisiana & Arkansas found justified. *Lumber Rates to Eastern Cities*, 212 (216).

EQUALIZING TRANSPORTATION COSTS.

Intervener was induced to shrink his selling price 10 cents per ton apparently to meet anticipated increased charges; but shippers may not be heard to demand redress from carriers for commercial losses even though assumed by them for purpose of equalizing transportation costs. *Hygienic Ice Co. v. C. & N. W. Ry. Co.* 384 (387, 388).

EQUATED TRAFFIC UNIT.

Reckoned in terms of, the cost of service has increased since 1901. *Western Passenger Fares*, 1 (10).

EQUIPMENT. *See also* **CARS.**

Improvement of track and use of larger and heavier locomotives have enabled freight service to handle longer and heavier trains. *Western Passenger Fares*, 1 (34).

Increased cost and quality of equipment has not resulted in a corresponding increase in number of passengers per car-mile. *Id.* (36-37).

If different rates are published, dependent upon equipment used, the shipper's right to order and to have equipment desired must be recognized. *Eagle Ice Co. v. C., M. & St. P. Ry. Co.* 250 (258, 259).

Of Burnside & Burkesville Transp. Co. and of complainant. *Cumberland Transp. Co. v. C., N. O. & T. P. Ry. Co.* 463 (464).

Equipment of Porto Rican railroads. *Safety Appliances on Railroads in Porto Rico*, 470 (475).

Steamers, tugs, and barges of Associated Oil Co. *S. P. Co. Ownership of Oil Steamers*, 525 (530, 532).

1. Steamers operated by eleven steamer lines which compose the **and** lake lines. *Appendix. Rates via Rail-and-Lake Routes*, 302 (319).
2. Standard and differential routes to Chicago. *Appendix. Id.* (322).
3. Class rates to Chicago and St. Louis via standard and differential **r** (328, 332).
4. Lake Lines—Combined investment and income account. *Id.* (338).
5. Lake Lines division of tonnage as between package and bulk freight for year ended Dec. 31, 1914, divided as between eastbound and **v** classification of tonnage. *Id.* (340, 342, 344).

EXPORT RATES. *See also* CANCELLATION.

Increased rates on grain, grain products, and by-products from c. l. **and** certain points in Wisconsin, Iowa, Missouri, and Kentucky **ports** found not justified. Propriety of relationship of Atlantic port **ports** not directly in issue and is not passed upon. **Export Grain Case**
 Charges on lumber from points in Texas, creosoted in transit at Ne **for** export, found unreasonable. **American Creosote Works v. M**
R. R. & S. S. Co. 238.

Increased reshipping export rates on **v** **and** **v** **new** **to** not justify

FABRICATION IN TRANSIT.

Restriction of service at Rochester, Ind., and Greenville, Pa., to iron and steel articles intended for framework of sections for bridges or buildings justified.

Fabrication In Transit at Greenville, Pa., 370.

FACILITIES.

Carriers of live stock unquestionably must provide suitable facilities for loading, unloading, and caring for live stock, including suitable pens, but not at every point on their lines where dealers in live stock choose to establish their plants.

Felin & Co., Inc., v. P. & R. Ry. Co. 231 (233).

For handling of freight at landings on Cumberland River. Cumberland Transp. Co. v. C., N. O. & T. P. Ry. Co. 463 (466).

FACTOR.

York-Chattanooga component of combination rate on logs from Boyd, Ala., to Chattanooga, Tenn., found unreasonable. McLean Lumber Co. v. A., T. & N. Ry. Co. 520 (521).

Increased rate on soft coal, Manistique to Gladstone, Mich., considered as a factor in through rate from Pennsylvania and West Virginia mines to Gladstone, not justified. Davis v. M., St. P. & S. S. M. Ry. Co. 523 (524).

FAST FREIGHT LINES.

Competition of, with lake lines. Lake Line Applications Under Panama Canal Act, 77 (78).

FERRIES. See also CAR FERRY.

Increased rates for ferriage of vehicles and animals not justified. New York-Jersey City Ferry Rates, 103.

Fares, fares, rules, and regulations of ferries must be filed with Commission as required by section 6, and are subject to Commission's jurisdiction. Id. (106).

Wording of section 1 with respect to, quoted. Peninsular & Occidental S. S. Co. 432 (435).

FILING TARIFFS. See also SHORT NOTICE; TARIFFS.

Commission can at any time require filing of divisions. Divisions of Joint Rates on Railway Fuel Coal, 265 (267).

FINANCIAL CONDITIONS.

Evidence of both carriers and protestants and examination of the records show an increase in ratio of operating expenses to operating revenue between 1901 and 1914; an increased cost of labor; a rising scale of taxes; and a diminished compensation for service. Western Passenger Fares, 1 (11).

Financial needs of lake lines. Rates via Rail-and-Lake Routes, 302 (305).

Results of operations of lake lines can not be accepted as substantiating their contention of need of additional revenue. Id. (314).

FINANCIAL RESPONSIBILITY.

Defendants question the financial responsibility of complainant; but they have practicable methods of insuring payment of their proportion of freight charges, and furnishing of a bond by complainant is not necessary. Black & White River Transp. Co. v. M. P. Ry. Co. 244 (246, 249).

Refusal to establish through routes and joint rates can not be justified by showing that defendants question financial strength of petitioner; however, before same are established, petitioner should first execute a good and sufficient bond in the sum of \$5,000 to protect defendants. Cumberland Transp. Co. v. C., N. O. & T. P. Ry. Co. 463 (468, 469).

"FOR TRAFFIC."

Phrase is in nowise limited, and it is immaterial whether or not traffic involved is foreign. Peninsular & Occidental S. S. Co. 432 (436).

FORAKER ACT.

Civil government for Porto Rico, etc. Safety Appliances on Railroads in Porto Rico, 470 (472).

"GREAT NORTHERN."

Construction of the steamship "Great Northern", and other data concerning passage through the Panama Canal, etc. Steamship "Great Northern," 260 (264).

GROUP RATES.

Pittsburgh district extended to include Beasco, Pa., with respect to lake cargo coal.

Pitt Gas Coal Co. v. P. R. R. Co. 240 (243).

Group of destinations in which Lynchburg, Va., is located is broader than circumstances require or justify, and rate to Lynchburg is fixed at maximum of \$1.40 per ton. Bituminous Coal Rates to the Southeast. 652 (667).

Defendants contend that an extension of the St. Louis rates to stations on line of the N., C. & St. L. Ry. would cause a material extension of the St. Louis group, and perhaps lead to a complete disintegration of the Nashville group; however, the possibility of a further readjustment should not preclude the establishment of nondiscriminatory rates from Paducah, Ky. Paducah Board of Trade v. A. & S. Ry. Co. 760 (766).

HANDLING. See PACKAGE FREIGHT.**HEADNOTE.**

Of report in former case appears to overstate findings of the report itself. Detroit Reconsigning Case, 274 (278).

HEARING. See also REHEARING.

It is not just to the Commission to set its machinery in motion and to create a situation compelling a hearing and making of a record only to develop the fact that there is a controversy between carriers respecting divisions. Coal from Toluca, Ill. 230 (231).

Present record inadequate for a final determination, and case will be further heard. McCormick & Co. v. S. P. Co. 234.

Complaints involving rates on coal set for further hearing. Holmes & Hallowell Co. v. G. N. Ry. Co. 627 (649).

HUDSON TUBES.

Carry practically all Pennsylvania R. R.'s passengers from Jersey City. New York-Jersey City Ferry Rates, 103 (113).

Competition with, discussed. Id. (109-110).

ICING. See REFRIGERATION.**IMPORTS.**

Bauxite ore. 1915 Western Rate Advance Case—Part II, 114 (141).

Burlap used in this country is imported, largely from India and through ports of Boston, New York, and New Orleans. New Orleans Joint Traffic Bureau v. A. & S. Ry. Co. 444 (445).

IMPORT RATES.

Rates on imported blackstrap molasses to Omaha from Mobile and New Orleans not unreasonable or unjustly discriminatory. Omaha Grain Exchange v. M. & O. R. R. Co. 363.

Withdrawal of import rates on ferromanganese from eastern ports to c. f. a. territory justified. No unjust discrimination shown. Ferromanganese to Western Points, 374.

Maintenance of a rate on burlap bags from New Orleans to Dallas, which exceeds by more than 5 cents per 100 pounds the import rate on burlap between same points, is unduly prejudicial to shippers of the former. New Orleans Joint Traffic Bureau v. A. & S. Ry. Co. 444 (448).

IMPROVEMENTS. See also PASSENGER TRAIN SERVICE.

Substantial improvements in passenger service have been made since 1900 at large expense to carriers, resulting in greater degree of comfort, convenience, and safety. Western Passenger Fares, 1 (41).

INCLINE.

Carriers have been unable, even with assistance of Government engineers, to find a point on the west bank of the Mississippi River in vicinity of Birds Point, Mo., at which an incline can be permanently located. *Paducah Board of Trade v. I. C. R. R. Co.* 719 (721).

INDUSTRIAL RAILWAYS.

Trunk lines may with propriety apply Chicago rates to and from industries located on line of the West Pullman. *Chicago, West Pullman & Southern R. R. Co.* Case, 408 (414).

Where industrial line acts only in capacity of a plant facility and not a common carrier, trunk lines need not, in absence of unjust discrimination, make any allowance so long as they are ready to perform switching wherever by custom and general usage the line-haul rate covers that service. *Id.* (414).

A common-carrier industrial line should be compensated for all costs reasonably apportionable to service performed. *Id.* (414).

Switching performed by industrial line between industries and connecting carriers may properly be regarded as a service for which connecting carriers may pay a division of the line-haul rate. *Id.* (415).

From its entire business industrial line should not earn more than a fair return on property devoted to public use, less reserve for accrued depreciation, etc. *Id.* (415).

Rule for determining division or allowance where an industrial line is permitted to operate over tracks of connecting lines in effecting an interchange of traffic. *Id.* (417).

Rule for determining proper division or allowance to be accorded for interchange switching over leased tracks with trunk lines other than the one which owns tracks used in performing the service. *Id.* (418).

Indiana Northern found to be a common carrier with which connecting lines may join in through rates or to which they may grant allowances for interchange switching. *Indiana Northern Railway Case*, 491.

Whenever agent for switching cars between trunk lines is controlled by shipper the amount of compensation paid for service performed should be governed by same rules which govern amount paid for interchange switching to or from industry tracks or team tracks located on the industrial line. *Id.* (494).

The L. S. & M. S. may remove discrimination against quarry company by making reasonable allowances or divisions to the Lorain & Southern or by any lawful method. *Lorain & Southern R. R. Co. Case*, 497 (501).

The L. & N. R. R. directed to revise its switching arrangements with short line. *Chestnut Ridge Railway Case*, 558.

Present divisions of through rates found not excessive. *Mohasuck Valley R. R. Case*, 566.

INDUSTRIAL TRACKS. See also PRIVATE TRACKS.

Additional cost of receiving or delivering carload freight on industrial tracks does not necessarily imply that the service is accessorial for which an addition may be made to the line-haul rate, or that it is other than a mere substitute for team-track receipts and deliveries. *Boardman Co. v. S. P. Co.* 81 (84).

INDUSTRIES.

Coop-rage stock is still produced in Wisconsin and Michigan, but the industry labors under handicap of greater manufacturing costs as compared with southwestern coop-rage production. *Lumber to Wisconsin Points*, 198 (207).

INFECTED CATTLE.

Carrier's agent negligently permitted use of pens for shipments of, and complainant shipped from point taking higher rate. Commission not empowered to award reparation. *Criswell v. W. F. & N. W. Ry. Co.* 97.

INFORMAL COMPLAINT. *See* **FORMAL COMPLAINT.**

INSULATED CARS. *See* **CARS.**

INTERCHANGE SWITCHING.

For interchange switching with trunk line which owns tracks industrial line may not receive more than it would have cost trunk line to perform the same service. Chicago, West Pullman & Southern R. R. Co. Case, 408 (418).

Record indicates no reason for charging more for interchange between team-tracks and connecting carriers than is charged for interchange between industries and connecting carriers. *Id.* (419-420).

INTERCORPORATE RELATIONSHIP.

What voice lake lines have in naming their rates or divisions, when any at all, is usually that of an official who occupies a dual traffic capacity for the railroad and its controlled lake lines. Rates via Rail-and-Lake Routes, 302 (307).

The record shows that intercorporate relations with rail lines result in further depletion of lake-line revenues. *Id.* (314).

Capital stock of steamship company held in trust by Central of Georgia. Capital stock of Central of Georgia, except directors' shares, was acquired by Illinois Central in 1909. All have directors in common. Ocean S. S. Co. of Savannah, 422 (423).

Indiana Northern will be expected to conduct its affairs entirely independent of the Oliver Chilled Plow Works, and to treat that industry as any other shipper upon its line. Indiana Northern Railway Case, 491 (494).

Officers of railroad and quarry company are practically identical. Lorain & Southern R. R. Co. Case, 497 (499).

Zinc company controls entire capital stock of short line. Chestnut Ridge Railway Case, 558 (559).

INTERNATIONAL HARVESTER COMPANY.

Property of, taken over by the International Harvester Company of New Jersey and International Agricultural Corporation. Stock of each is held by same stockholders. Chicago, West Pullman & Southern R. R. Co. Case, 408 (409).

INTERVENERS.

In case before Commission. Lake Line Applications Under Panama Canal Act, 77; McCormick & Co. v. S. P. Co. 234; Detroit Reconsigning Case, 274 (276); Cattle Raisers Stockyards Assn. v. E. P. & S. W. Co. 284; Public Service Commission of Missouri v. Wabash R. R. Co. 297; Hygienic Ice Co. v. C. & N. W. Ry. Co. 384; Markle Co. v. L. V. R. R. Co. 441; New Orleans Joint Traffic Bureau v. A. & S. Ry. Co. 444; Cumberland Transp. Co. v. C., N. O. & T. P. Ry. Co. 463; Brown & Sons Lumber Co. v. L. & N. R. R. Co. 507; Pacific Motor Supply Co. v. A., T. & S. F. Ry. Co. 703; Paducah Board of Trade v. I. C. R. R. Co. 719; Harness to Oklahoma, 726; Big Basin Lumber Co. v. S. P. Co. 730.

INTRASTATE COMMERCE. *See* **JURISDICTION.**

INVESTMENT.

Allocation of property and cost of service as between freight and passenger business is to an extent feasible. Western Passenger Fares, 1 (42).

It is not fair to assume that rates on vehicular traffic should be sufficiently high to pay returns on investment in passenger facilities no longer demanded or occupied. New York-Jersey City Ferry Rates, 103 (110).

Accrued depreciation should be deducted from original cost or inventory value of property for purpose of arriving at a proper basis for a return. *Id.* (111).

The fact that investments have been made in expectation that existing rates would be continued in effect can not be considered in determining reasonableness of proposed increased rates. 1915 Western Rate Advance Case—Part II, 114 (146).

INVESTMENT—Continued.

Industrial line should not earn more than a fair return on property devoted to public use, less reserve for depreciation, etc. *Chicago, West Pullman & Southern R. R. Co. Case*, 408 (415).

INVESTMENT AND INCOME ACCOUNT. *See* **ACCOUNTS.**

ISSUE. *See also* **PLEADINGS.**

Respondents and protestants both erroneously assumed that rates on pancake flour were involved. Rates on Buckwheat and Corn Flour, 364 (366).

Reasonable rates were prescribed on anthracite coal to tidewater ports f. o. b. vessels for transshipment in the *Anthracite Case*, 35 I. C. C., 220, decided since these cases were submitted. *Markle Co. v. L. V. R. R. Co.* 441; *Plymouth Coal Co. v. P. R. R. Co.* 457; *Red Ash Coal Co. v. C. R. R. Co. of N. J.* 460.

JOINT RATES. *See also* **DIVISIONS; THROUGH ROUTES AND JOINT RATES.**

Joint rates from Koshkonong district have been in effect nearly 10 years. Increased rates made by combination on Mississippi River justified. *Peaches from Missouri Points*, 89 (90).

Withdrawal of joint rates on coal from points in West Virginia to points in Kentucky not justified. *Coal to Kentucky Points*, 194.

Cancellation of joint rates which would result in increased rates on coal to interstate points on the C., M. & St. P. Ry. found not justified; the sole reason being that carriers were no longer in accord respecting their divisions. *Coal from Toluca, Ill.* 230.

Cancellation of, by rail carriers in connection with complainant on lumber, etc., from landings on the Black and White rivers, in Arkansas, not justified, and reestablishment required. *Black & White River Transp. Co. v. M. P. Ry. Co.* 244.

By participating in joint rates and fares between Flavel, Oreg., and San Francisco, respondents do or may compete with their steamships. *Steamship "Great Northern,"* 260 (263).

Original report modified, and it is held that joint rates established in connection with terminal company to New York, including points within the lighterage limits and vessel delivery for export, should not exceed defendants' rates over other routes. *East Jersey R. R. & T. Co. v. C. R. R. Co. of N. J.* 357 (358).

Commission may require trunk lines to establish, with connecting industrial line lower than combination on junction point of trunk line and industrial line. *Chicago, West Pullman & Southern R. R. Co. Case*, 408 (415).

Joint rate from Pocahontas district through St. Paul, Va., to points on the C., C. & O. should not exceed \$2.35 per ton. *Bituminous Coal Rates to the Southeast*, 652 (666).

JUNCTION-POINT RATES. *See also* **ABSORPTION.**

In publishing joint rates from points on the Chestnut Ridge no higher than junction-point rates, it is expected that trunk line will not shrink its rates more than it would in case the Chestnut Ridge were not controlled by its principal shipper. *Chestnut Ridge Railway Case*, 558 (563).

It does not seem unreasonable for the New Haven to continue extending the junction-point rate to or from points on the Moshassuck Valley on commodities other than coal and to accord that road reasonable divisions. *Moshassuck Valley R. R. Case*, 566 (569).

JURISDICTION.

Commission is empowered to award reparation only for violations of the act. *Criswell v. W. F. & N. W. Ry. Co.* 97 (98).

Rates, fares, rules, and regulations of ferries must be filed as required by section 6, and are subject to Commission's jurisdiction. *New York-Jersey City Ferry Rates*, 103 (106).

JURISDICTION—Continued.

Commission has jurisdiction over the charge for switching and rehooking of cars loaded with outbound grain only when the movement is a part of an interstate movement. 1915 Western Rate Advance Case—Part II, 114 (160).

Storage company at Memphis is not subject to Commission's jurisdiction; question as to whether Memphis & Arkansas Packet Co. is subject to jurisdiction of Commission, since it is unwilling to subject itself thereto, not determined. Pine Bluff Traffic Bureau v. L. & N. R. R. Co. 218 (224).

Question of Commission's jurisdiction over a contract under which cattle consigned to and through El Paso are to be delivered by defendants to yards of the Union Stock Yards Company not passed upon. Cattle Raisers Stockyards Assn. v. E. P. & S. W. Co. 284 (286).

Shipments of damaged cotton in sacks from Greenville to Galveston, Tex., there placed in warehouse and rehandled before draying to shipside for export, were intrastate to Galveston and not within Commission's jurisdiction. Kempner v. M., K. & T. Ry. Co. 396 (397).

Commission without power to except cane cars from provisions of safety appliance acts relating to power brakes. Safety Appliances on Railroads in Porto Rico, 470 (476).

Held unnecessary to pass upon question of Commission's jurisdiction over oil company's boat operations on San Francisco Bay. S. P. Co. Ownership of Oil Steamers, 525 (537).

Shipment of sugar in bond from a point in Mexico, through the United States, to another point in Mexico, is beyond Commission's jurisdiction. Canales v. G., H. & S. A. Ry. Co. 573.

Complainant purchased rails f. o. b. Denison, Tex., and rehipped cars thence to Newton, Tex.; Held, that the transportation from Denison to Newton was intrastate and beyond Commission's jurisdiction. Zelnicker Supply Co. v. M., K. & T. Ry. Co. 615 (616).

Commission is without power to pass upon the reasonableness of the lumber rate from Madera, Mexico, to El Paso; and the protection of American manufacturers and producers from foreign competition is not within powers of this Commission. Big Basin Lumber Co. v. S. P. Co. 730 (737, 738).

LABOR. See also WAGES.

Labor compensation compared with total operating revenues.—Table No. 3. Western Passenger Fares, 1 (6).

Increase in average daily compensation of all employees.—Table No. 9. Total labor cost per train-mile and per car-mile.—Table No. 10. Id. (9).

Total labor costs, all employees, per equated traffic unit.—Table No. 11. Id. (10).

Evidence shows an increased cost for. Id. (11).

LAKE-AND-RAIL RATES. See RAIL-AND-LAKE RATES.**LAKE CARGO COAL.**

Pittsburgh district extended to include Besco, Pa., with respect to rate on coal to lake ports for transshipment. Pitt Gas Coal Co. v. P. R. R. Co. 240 (243).

LAKE LINES

Upon rehearing, held, that Commission was not in error in finding that the Lehigh Valley R. R. does or may compete with its lake line; and that it does or may "strive" in the interest of all-rail routes for traffic which the lake line might otherwise secure. Lake Line Applications Under Panama Canal Act, 77 (80).

Association of Lake Lines exercises a dominating influence over its members favorable to interests of railroad owning lake lines. Rates via Rail-and-Lake Routes, 302 (303).

LAKE LINES—Continued.

Financial needs of, discussed. Showing of combined net operating gain or deficit for seven lines is a result not to be considered alone, but rather in the light of all conditions surrounding the ownership and operation of lake lines by competing rail carriers. Rates via Rail-and-Lake Routes, 302 (305, 306).

Have practically no voice in naming of rates or divisions. What voice they have, when any at all, is usually that of an official who occupies a dual traffic capacity for the railroad and its controlled lake lines. *Id.* (307).

With railroad competitors of lake lines, investment, traffic density, and gross revenues have increased greatly, even while average revenue per unit of tonnage was decreasing. *Id.* (310).

Business of package bolts has been artificially kept at a practical standstill by policy of unattractive rates and differentials, imposed upon them by their rail competitors. *Id.* (310).

Operating expenses, taxes, and rentals. *Id.* (310).

Exhibit showing steamers operated by eleven lake lines. *Appendix. Id.* (319).

Exhibit showing standard and differential routes to Chicago. *Appendix. Id.* (322).

LAWFUL RATES.

Switching charges collected without tariff authority. *Fisher Mfg. Co. v. N. Y. N. H. & H. R. R. Co.* 547.

LEASE.

Carriers declined to renew lease of land upon which intervening stockyards company's yards are situated, and yards are now being dismantled. *Cattle Raisers Stockyards Assn. v. E. P. & S. W. Co.* 284 (285).

Trunk lines have a right to lease their tracks so long as the arrangement is profitable to them and does not interfere with performance of public duties (*Chicago West Pullman & Southern R. R. Co. Case*, 408 (417)).

LEGAL RATES.

Shippers chargeable with knowledge of. *Baker-Wakefield Cypress Co. v. T. & P. Ry. Co.* 546.

LEGISLATIVE FUNCTION. See **THROUGH ROUTES AND JOINT RATES.**

LENGTH OF HAUL.

Car-mile earnings and ton-mile earnings are of little value for purpose of comparing one rate with another unless length of haul in each is shown. 1915 *Western Rate Advance Case—Part II*, 114 (126).

LESS-THAN-CARLOAD RATES. See **CARLOAD AND LESS-THAN-CARLOAD**

LIABILITY OF CARRIER. See **THROUGH ROUTES AND JOINT RATES.**

LIMITATION OF ACTION.

Parties shown upon record to have borne freight charges are not before Commission and are now barred. *Oden & Elliott v. S. A. L. Ry.* 345 (350).

In absence of a privity of interest, the filing of a claim by consignee does not constitute a filing on behalf of consignor; and claim as to certain of consignor's shipments is barred by the statute of limitations. *Traffic Bureau, Sioux City Commercial Club, v. A. & S. R. R. Co.* 353 (354, 355).

Present complaint broadens scope of informal case and creates a new and independent cause of action not presented within the statutory period. *Hypack Ice Co. v. C. & N. W. Ry. Co.* 384 (387).

Claims on two shipments of liquid asphaltum were not presented within statutory period. *Standard Paint Co. v. S. P. Co.* 405.

Claim filed July 25, 1913, could not be disposed of informally, and complainant was so notified November 29, 1913. Two years elapsed before claim was again brought to Commission's attention by filing of stipulation. This failure on part of complainant must be construed as an abandonment of the claim. *Elm City Lumber Co. v. A. C. L. R. R. Co.* 571.

LIMITATION OF ACTION—Continued,

Complainant abandoned its claim by not filing formal complaint until more than 3 years after withdrawal of informal complaint. *Skinner Bending Co. v. T., St. L. & W. R. R. Co.* 582.

LINE-HAUL RATES. See also INDUSTRIAL RAILWAYS.

In absence of tariff provisions to the contrary the line-haul rate of a particular carrier includes the receipt or delivery of carload freight only at industries or other points located upon its own rails. *Boardman Co. v. S. P. Co.* 81 (85).

LOADING. See also AVERAGES; PACKING.

Of ice is determined to some extent by weather conditions. Average is between 28 and 30 tons. *Eagle Ice Co. v. C., M. & St. P. Ry. Co.* 250 (252).

Apples can be loaded as high as 32,000 pounds, and average loading from Missouri Valley territory is 26,000 or 27,000 pounds. *Public Service Commission of Missouri v. Wabash R. R. Co.* 297 (299).

Flat and round wire when packed similarly will load about equally. *American Steel & Wire Co. v. A. & V. Ry. Co.* 525 (526).

LOADING AND UNLOADING FACILITIES. See FACILITIES.**LOCATION.**

Complexities growing out of the geographical location of many carriers serving North Carolina and South Carolina are such as to make it necessary to proceed with caution in laying down any hard and fast differential basis. *Bituminous Coal Rates to the Southeast*, 652 (665).

LOCOMOTIVE.

Charges on locomotive, not under steam, on its own wheels, from Erie, Pa., to Pensacola, Fla., reconsigned to Milton, Fla., held not unreasonable. *Stearns & Culver Lumber Co. v. L. & N. R. R. Co.* 376.

LONG AND SHORT HAUL.

Rate of 29 cents on refined petroleum and its products from Vinita, Okla., to Windsor, Mo., which moved subsequent to the establishment of the 17-cent rate to Sedalia, Mo., to which point Windsor is intermediate, found unreasonable. *Milliken Refining Co. v. M., K. & T. Ry. Co.* 295.

Increase intended to remove departures from the long-and-short-haul provision not justified. *Stone to Des Moines, Iowa*, 372.

Rate from twin cities to Waterloo exceeded rate to Des Moines. Waterloo rate could not be reduced under rule 77, Tariff Circular 18-A. *Id.* (373).

Rate on brewers' dried grain from Louisville, Ky., to Washington, D. C., and Alexandria, Va., lower than to Manassas and Nokesville, Va., intermediate points, was protected by a fourth section application. *Hottelet & Co. v. C. & O. Ry. Co.* 382 (383).

Maintenance of lower rates on bottles from Dunbar, W. Va., to Louisville, Ky., than are concurrently maintained on like traffic to Mount Sterling, Lexington, Midway, Frankfort, and other intermediate points, not justified. *Axton v. K. & M. Ry. Co.* 389 (393).

Fourth section departures in rates from Sparta and Tomah, Wis., to Chicago have been rectified. *National Pickle & Canning Co. v. C., M. & St. P. Ry. Co.* 403 (404).

Rates from Sellersburg, Ind., to points in southern Indiana and Illinois, applicable through Kosmosdale, Ky., said to be lower than rates from Kosmosdale. Question not passed upon. *Kosmos Portland Cement Co. v. I. C. R. R. Co.* 448 (452).

Application for relief with respect to rates on cottonseed products from Brownsville, Tenn., denied in part and granted in part. *Brownsville Cotton Oil & Ice Co. v. C., R. I. & P. Ry. Co.* 503 (506).

LONG AND SHORT HAUL—Continued.

Departure from long-and-short-haul rule in rates from Cape Girardeau, Mo., to points beyond Raceland, La., was rectified prior to hearing. Complaint dismissed. Cape Girardeau Portland Cement Co. v. St. L. & S. F. R. R. Co. 539 (539).

Rate on logs from Cambridge City, Ind., to Dayton, Ohio, exceeded rate from Lewisville, Ind. Reparation awarded. Hossafous v. P., C., C. & St. L. E. Co. 575.

Authority to continue rates on logs from Snow Lake, Ark., to St. Louis lower than rates from Haynes and other intermediate points, and from Arkansas City to St. Louis lower than from McGehee and other intermediate points, denied. Indiana Veneer & Lumber Co. v. St. L., I. M. & S. Ry. Co. 579 (580-581).

Kingman and Winslow, Ariz., are intermediate to the Pacific coast on defendant's main line and are entitled to rates on flour from Kansas and other States west of the Missouri River as low as over the same lines to California terminals. Arizona Stores Co. v. A., T. & S. F. Ry. Co. 669 (670).

Maintenance of lower rates to and from Frankfort, Ky., than to and from Shelbyville and other intermediate points, justified, provided present rates thereat be not exceeded. Shelbyville Business Men's Assn. v. L. & N. R. R. Co. 683 (683).

Rate on roofing tile from Coffeyville, Kans., to Sioux Falls, S. Dak., through Sioux City, Iowa, creates a departure from the long-and-short-haul rule which is protected by an application not set for hearing. Ludowici-Celadon Co. v. M., K. & T. Ry. Co. 709 (710).

Richmond, Ky., is not intermediate to Covington, Ky., from Lorne, Ala., by way of Louisville and La Grange, Ky., but is intermediate over some routes. Odes Elliott Lumber Co. v. A., B. & A. R. R. Co. 717 (718).

LOW-GRADE COMMODITY.

Commodities used as paper makers' fibers are, as a whole, of very low grade. Official Classification Ratings, 166 (188).

Ice said to be one of the lowest grade commodities which railroads are called upon to transport. Eagle Ice Co. v. C., M. & St. P. Ry. Co. 250 (253).

Damaged cotton. Kempner v. M., K. & T. Ry. Co. 396 (397).

LOW RATES. See also NONCOMPENSATORY RATES.

The basis for fares now applied for transportation of interstate passengers is low in territory involved than in states south, east, and west thereof. Western Passenger Fares, 1 (41).

Uncontroverted evidence offered to the effect that rates on dried and evaporated fruits are unduly low. 1915 Western Rate Advance Case—Part II, 114 (149).

Present reshipping rates from and to points involved admittedly are low; but rates on grain and grain products from west to Atlantic seaboard should be relatively low because of the large volume of traffic. Grain from Manitowoc, Wis., 549 (551).

Rate on logs and lumber from Louisiana and Arkansas to Cairo not found to be unduly low, and there appears to be no reason for permitting the Rock Island to charge a higher rate to Paducah than to Cairo. Paducah Board of Trade v. I. C. R. R. Co. 719 (724).

The fact that necessity compels the maintenance of subnormal rates at remote points upon their lines does not justify the carriers in offsetting this condition by the imposition of unreasonably high rates at the nearer points. Bituminous Coal Rates to the Southeast, 652 (667).

LOWREY TARIFF.

Referred to. *Eagle Ice Co. v. C., M. & St. P. Ry. Co.* 250 (255).

Does not apply to live stock. *Omaha Packing Co. v. C., M. & St. P. Ry. Co.* 378 (380).

MAINTENANCE EXPENSES. *See also* SEPARATION OF EXPENSES.

Ratio of maintenance expenses to cost of road and equipment. *Western Passenger Fares*, 1 (7).

Ratio of maintenance expenses to operating revenues. *Id.* (7).

Methods used for division of maintenance of way expenses according to different bases employed and applied to revenues and expenses of the 46 roads, discussed. *Id.* (18).

Yard maintenance. *Id.* (26).

MANAGEMENT.

It is not the function of Commission to prescribe either public policy or managerial policy of carriers. *Western Passenger Fares*, 1 (41).

MANUFACTURED ARTICLES.

The general rule that a manufactured article should take a higher rating than the raw material is subject to exceptions; e. g., the manufactured article might be a better transportation unit than the raw material. *Official Classification Ratings*, 166 (183).

MAPS.

Present boundary of Pittsburgh district and location of complainant's mine with respect thereto. *Pitt Gas Coal Co. v. P. R. R. Co.* 240 (241).

Plant tracks and points of interchange with trunk lines. *Chicago, West Pullman & Southern R. R. Co. Case*, 408 (411).

Showing lines of railroad now operated on island of Porto Rico. *Safety Appliances on Railroads in Porto Rico*, 470 (473).

Showing location of the Lorain & Southern. *Lorain & Southern R. R. Co. Case*, 497 (498).

Showing routes from Cincinnati to Louisville, Shelbyville, and Lexington, Ky., and related points. *Shelbyville Business Men's Asso. v. L. & N. R. R. Co.* 675 (676).

Diagram showing lumber-producing territory in Washington, Idaho, Oregon, California, Nevada, Utah, Arizona, New Mexico, and northern Mexico. *Big Basin Lumber Co. v. S. P. Co.* 730 (732).

Relative position of Cairo, Ill., and Paducah, Ky. *Paducah Board of Trade v. C., B. & Q. R. R. Co.* 743 (746).

Showing lines leading to, from, and between Cairo, Cairo Junction, and East Cairo, and location of bridge across the Ohio River. *Id.* (747).

Showing parts of St. Louis territory, Louisville territory, and Nashville territory. Relative location of Paducah, Ky., and Cairo, Ill. *Paducah Board of Trade v. A. & S. Ry. Co.* 760 (762).

MARINE INSURANCE.

Assertion that 1907 increases were made to cover cost of marine insurance then assumed and since borne by lake lines on westbound class traffic not supported by proof. *Rates via Rail-and-Lake Routes*, 302 (306).

MARKED CAPACITY.

Charges on liquid asphaltum in tank cars from Paraffin, Cal., to Chicago Heights, Ill., held unreasonable to extent they exceed the lawfully published rate based upon an estimated weight of 7.9 pounds per gallon and marked gallon capacity of cars used. *Standard Paint Co. v. S. P. Co.* 405 (407).

MARKET COMPETITION. *See* COMPETITION (MARKET).

MARKING PACKAGE.

Complainant not shown to have complied with classification requirement with respect to marking of each piece of less-than-carload freight. Application for carload rate and minimum not unreasonable. *Passow & Sons v. C., M. & St. P. Ry. Co.* 711.

MEASURE OF DAMAGES. See DAMAGES.**MEASURE OF RATES.**

Car-mile earnings and ton-mile earnings are of little value for the purpose of comparing one rate with another unless the length of haul in each case is about 1915 Western Rate Advance Case—Part II, 114 (126).

It is contended that neither a water-compelled rate nor state rate is a proper measure of the reasonableness of an interstate rate; but carriers must show affirmatively that proposed increases are reasonable. *Id.* (153).

Fact that rates found reasonable by Commission in a former case were substantially higher than rates here attacked makes comparison of value in testing rates now involved. *Holmes & Hallowell Co. v. G. N. Ry. Co.* 627 (634).

MILEAGE RATES.

Carriers in c. f. a. territory have established a uniform mileage scale of rates applicable to sugar-beet traffic. Higher rates not justified. *Sugar Beets to Denver Ind.* 367.

MINIMUM WEIGHT.

Complainant is not entitled to more favorable minimum weight requirements in central freight association territory than are imposed for shipments entirely within that territory. *Minneapolis Threshing Machine Co. v. M. & St. L. R. Co.* 92 (93).

Rules relative to minimum weights for grain thrashers and separators moving from Hopkins, Minn., to points in Ohio not found unreasonable. *Id.* (94).

Building marble and building stone generally load in excess of 36,000 pounds and change in 36,000-pound minimum not warranted. *Drake Marble & Tile Co. v. N. P. Ry. Co.* 512 (516).

A flexible minimum on oats reasonably adjusted to capacities of different cars used as now provided has many advantages over proposed minimum weights which are not justified. *Grain from Manitowoc, Wis.* 549 (556).

There is no evidence that 50,000 pounds on flour and corn meal to Kingman and Winslow, Ariz., was or is an unreasonable minimum. *Arizona Stores Co. v. A. T. & S. F. Ry. Co.* 669 (670).

MINNESOTA RATES. See also STATE RATES.

It is not true, as seems to be assumed by counsel for some complainants, that the Supreme Court in the *Minnesota Rate cases*, 230 U. S., 352, held the Minnesota rates to be reasonable. It was merely decided that they were not confiscatory. *Holmes & Hallowell Co. v. G. N. Ry. Co.* 627 (635).

MISQUOTATION OF RATE.

Former case in which it was found that defendant's failure to properly advise shipper as to routing "does not differ materially from a case involving merely a misquoted rate," reaffirmed. *Reeves Coal Co. v. C., M. & St. P. Ry. Co.* 707.

MISROUTING. See also ROUTING.

Carload of cypress shingles from Plattenville, La., to Huntington, W. Va., moved as routed. Whether or not carrier's agent advised complainant that lower rate would apply is immaterial, as shippers are chargeable with knowledge of legal tariff rates. *Baker-Wakefield Cypress Co. v. T. & P. Ry. Co.* 546.

Shipments of writing paper from Adams, Mass., to Philadelphia, Pa., were routed in billing "P. R. R.," and forwarded by way of New York City at complainant's personal direction, moved by route intended, and were not misrouted. *Brown Paper Co. v. B. & A. R. R. Co.* 586 (588).

MISROUTING—Continued.

Contention that the Northern Pacific should have routed all shipments during injunction period via its intrastate line, upon the theory that lower intrastate rates, although enjoined, were at all times the lawful rates, is not well founded. Carrier was not required by law to change its methods of operation and abandon the use of its more favorable interstate line or take the risk of refunding part of charges. *Holmes & Hallowell Co. v. G. N. Ry. Co.* 627 (649).

MIXED CARLOADS.

Application of class rates on mixtures of fruits and vegetables, justified. *Fruits and Vegetables from Grand Rapids, Mich.*, 489.

Charges on shipment of dressed building marble and crushed marble held unreasonable to extent they exceeded charges on basis of highest carload rate and highest minimum applicable to any article in the mixture. *Drake Marble & Tile Co. v. G. N. Ry. Co.* 517 (519).

Building marble, building stone, crushed marble, and cement, in mixed carloads, should be accorded rate applicable to article in mixture taking highest carload rate and highest minimum weight. *Drake Marble & Tile Co. v. N. P. Ry. Co.* 512 (515); *Drake Marble & Tile Co. v. G. N. Ry. Co.* 517 (520).

MIXTURES.

In case of a mixture made up of articles varying so widely in kind and value as those in agricultural implement mixture it would be practically impossible for carriers to have such information as to weighted average value as would enable them to weigh with nicety the value of the mixture as a factor in classification. 1915 Western Rate Advance Case—Part II, 114 (125).

NAME.

Tariff named rates on cement from New Castle, Pa., to Fayette, Fulton County, Ohio, delivering line L. S. & M. S., and to Fayette, Fayette County, Ohio, delivering line T. & W. Cancellation of the latter item, the inclusion of which was due to clerical error, as Fayette, Fayette County, did not then exist as a railroad station, found justified. *Cement to Ohio Points*, 697 (698).

NAVIGABLE RIVER.

Should be open to free and unrestricted use of any who desire to avail themselves of its advantages; and line operating thereon is prima facie warranted in asking for establishment of through routes and joint rates. *Cumberland Transp. Co. v. C., N. O. & T. P. Ry. Co.* 463 (468).

NAVIGABILITY.

Cumberland River is navigable throughout the year between Burnside, Ky., and Lock No. 21; but when water is low, small gasoline boats must be used between Lock No. 21 and Carthage. *Cumberland Transp. Co. v. C., N. O. & T. P. Ry. Co.* 463 (465).

NEGLIGENCE. See INFECTED CATTLE.**NESTING.**

Rule relating to nesting amended to include the words "unless otherwise specified" and with certain exceptions authorized for use in official, southern, and western territories. Ratings on articles that can not conform to restrictions surrounding a recognized practice should be treated separately. *Classification Nesting Rule*, 477.

Term signifies packing of like articles one within the other in such manner as to leave one as little exposed above the top of the other as practicable. *Id.* (478).

Merely bundling similar articles or packing together like articles which barely fit one within the other does not constitute such a nesting as to justify a reduction in rating. *Id.* (481).

NEW LINE.

Construction of, caused important changes in transportation conditions and reduced cost of service. *Bituminous Coal Rates to the Southeast*, 652 (656).

NONCOMPENSATORY RATES.

It is not the purpose or desire of the Commission to require respondents to perform transportation services under rates and charges the earnings from which are noncompensatory. Grain from Manitowoc, Wis. 549 (557).

NORTH BANK AND SOUTH BANK POINTS. See RELATIVE ADJUSTMENT "NORTHERN PACIFIC."

Construction and other data concerning the steamship. Steamship "Great Northern." 260 (263).

NOTICE. See also SHORT NOTICE.

Practice of giving Detroit consignee advance notice of passing Toledo became impracticable, and failure of carriers to make assessment of \$2 reconsigning charge conditional upon giving of passing notice has not rendered such charge unreasonable. Detroit Reconsigning Case, 274 (282).

NOTICE OF ARRIVAL.

Carriers made no effort on Sundays, holidays, or at night to deliver notice of arrival of cars, the offices of consignees being closed. Detroit Reconsigning Case, 274 (280).

OCEAN-AND-RAIL RATES. See DIFFERENTIALS.**OCEAN-AND-RAIL ROUTES.**

Extent to which Atlantic seaboard rate is projected inland varies with amount of rate and territory of destination. Extent of absorptions out of ocean-and-rail rates indicates strongly the need of protection of lake routes and their differentials. Rates via Rail-and-Lake Routes, 302 (316).

OHIO RIVER.

Fact that territory of origin is separated from territory of destination by the Ohio River should not be accepted as a justification for perpetuating an unjust discrimination. Paducah Board of Trade v. C., B. & Q. R. R. Co. 743 (752).

OPERATING CONDITIONS.

Comparison of operating conditions on northern lines and southern lines, 1914. Western Passenger Fares, 1 (33).

Are entitled to consideration in determining the relative reasonableness or practicability of two routes. Paducah Board of Trade v. I. C. R. R. Co. 719 (722).

OPERATING EXPENSES.

Increase in operating expense account as a whole is the result of individual increases and shows no alarming tendency. Rates via Rail-and-Lake Routes, 302 (311).

OPERATING INCOME.

Comparison of increase in net cost of road and equipment with increase in operating income. Net cost of road and equipment and operating income. Western Passenger Fares, 1 (8).

OPERATING RATIO. See also SEPARATION OF EXPENSES.

Table No. 1.—Operating ratios by groups of roads, 1901-1914. Western Passenger Fares, 1 (5).

Evidence shows an increase in ratio of operating expenses to operating revenue between 1901 and 1914. Id. (11).

Ratios of expenses to revenues, passenger service and freight service, respectively, 1907-1914. Table 17. Id. (28).

Ratio of maintenance expenses to operating revenues. Table 6. Id. (7).

OUT OF POCKET COST. See COST OF SERVICE.**OVERCHARGES.**

Unlawful charges on petroleum tailings based on rates applicable to fuel oil must be refunded. National Petroleum Assn. v. A., T. & S. F. Ry. Co. 287 (294).

No tariff authority for rates charged on brewers' dried grains from Louisville, Ky., to Manassas and Nokesville, Va., and shipments were overcharged. Refund should be made promptly. Hottelet & Co. v. C. & O. Ry. Co. 302.

OVERCHARGES—Continued.

Involved. *Davis v. M., St. P. & S. S. M. Ry. Co.* 523.

Accrued within United States on traffic moving from a point in Mexico through the United States to another point in Mexico, Held, beyond Commission's jurisdiction. *Canales v. G., H. & S. A. Ry. Co.* 573 (574).

On logs from Cambridge City, Ind., to Dayton, Ohio, by reason of failure to make allowance for stakes should be refunded. *Hossafous v. P., C., C. & St. L. Ry. Co.* 575 (576).

Commodity rate of 71 cents, and not the class A rate of 74 cents, should have been charged on lumber wagons to Louisiana. *Brown-Roberts Hdwe. & Supply Co. v. A. & V. Ry. Co.* 671 (673).

Charges collected on lumber from Lorne, Ala., to Richmond, Ky., on basis of a rate of 24 cents. The rate legally applicable was 23 cents. Refund will be made. *Oden-Elliott Lumber Co. v. A., B. & A. R. R. Co.* 717.

PACKAGE AND BULK FREIGHT. See EXHIBITS.

PACKAGE BOATS. See LAKE LINES.

PACKAGE FREIGHT.

Methods of handling at lake ports; more improved methods elsewhere. Rates via Rail-and-Lake Routes, 302 (312).

PACKET COMPANIES. See BOAT LINES.

PACKING. See also NESTING.

It is not apparent what advantage would accrue under proposed rating to shipper who compressed his less-than-carload shipments to greatest possible extent as compared with his competitor who failed to do so. Rating not justified. Official Classification Ratings, 166 (189).

PANAMA CANAL. See also COMPETITION (WATER).

Flour is shipped in large quantities by water from Pacific coast via the Panama Canal to north Atlantic ports, and distributed in competition with small miller in official classification territory. Official Classification Ratings, 166 (185).

PANAMA CANAL ACT. See also BOAT LINES.

No reason appears why Commission should modify its order denying application of the Lehigh Valley R. R. as to its lake-line service. Lake Line Applications Under Panama Canal Act, 77 (80).

Has further safeguarded rights of interested carriers with respect to joint arrangements. *Black & White River Transp. Co. v. M. P. Ry. Co.* 244 (248).

Owning and controlling railway lines do or may compete with steamers operating between Flavel, Oreg., and San Francisco, Cal.; but continuance of the service will neither exclude, prevent, nor reduce competition on the route by water, and should be permitted. Steamship "Great Northern," 260.

Competition defined. *S. P. Co. Ownership of Oil Steamers*, 525 (536).

PAPER RATES.

Ordinarily a carrier would not be required to maintain commodity rates from points at which no traffic originates, but in this case rates which would be left to apply upon occasional shipments would be excessive. Lumber Rates from Newcastle, Cal., 596 (597).

PARALLEL LINES.

C., N. O. & T. P. Ry. and L. & N. R. R., Cincinnati to Lexington, Ky. Shelbyville Business Men's Asso. v. L. & N. R. R. Co. 675 (681).

PARTIES. See also CONSIGNOR AND CONSIGNEE.

Shippers are not parties to proceeding, and therefore have no claims properly before Commission. *Black & White River Transp. Co. v. M. P. Ry. Co.* 244 (249).

Shown to have borne freight charges are not before the Commission and are now barred by statute of limitations. *Oden & Elliott v. S. A. L. Ry.* 345 (350).

posed; but reasonable maximum bases and fares prescribed. Id. (43).
Increase in charges for 1,000-mile tickets in territory north of Missouri
Missouri and on and north of the U. P. main line in Kansas, found
Id. (46).

While uniformity is generally desirable in making of passenger fares,
ditions have too often been urged as reasons for lower or higher fares in
localities to give this contention much force in the present situation
P. R. R. Co. 268 (272).

PASSENGER-MILE REVENUE. See **REVENUE**.

PASSENGER-MILES.

Passenger-miles per mile of road. Table No. 18. Western Passenger
1 (32).

PASSENGER TRAFFIC. See **VOLUME OF TRAFFIC**.

PASSENGER-TRAIN SERVICE.

Carriers have sustained their contention that business done by passenger
service is less profitable on the whole than is the freight service. Western
Passenger Fares, 1 (33, 41).

The public has a right to demand safe transportation; a reasonably
service; sufficient number of trains; and clean, sanitary, and comfortable
and stations. Id. (34).

Neither competition nor unreasonable demands of the public must be
excuse for waste and extravagance in. Id. (34).

PAST RATES—Continued.

Present ratings on beer have been in effect without change since 1887, when official classification No. 1 was published. *Official Classification Ratings*, 166 (169). Identical rates have applied from Milwaukee, Manitowoc, and Chicago to eastern markets for many years. *Grain from Manitowoc, Wis.*, 549 (553).

PLANT FACILITIES.

Complainant for its own convenience has provided private facilities of its own which are mere plant facilities and do not entitle complainant to compensation for its service performed by means of them. *Felin & Co. (Inc.), v. P. & R. Ry. Co.* 231 (233).

While the Cumberland Transportation Company is to some extent a "plant facility" of the grocery company, it has from the outset operated as a common carrier. *Cumberland Transp. Co. v. C., N. O. & T. P. Ry. Co.* 463 (464).

PLANT SERVICE. See also INDUSTRIAL RAILWAYS.

For interior plant switching the industry benefited should be charged with allocated capital and operating costs. *Chicago, West Pullman & Southern R. R. Co. Case*, 408 (415).

PLEADINGS.

Complaint in seeking recovery of amounts in excess of \$3 per car broadens the scope of the informal case and creates a new and independent cause of action not presented within the statutory period. *Hygienic Ice Co. v. O. & N. W. Ry. Co.* 384 (387).

POINTS OFF LINE. See LINE-HAUL RATES.

POPULATION.

Sparsity of, and scarcity of local passenger traffic in states of Nevada and Arizona. *Western Passenger Fares*, 1 (31).

Population per mile of road and basis for intrastate fares. *Id.* (32).

Average per square mile and per mile of road. *Id.* (33).

Of Porto Rico, 1,200,000. *Safety Appliances on Railroads in Porto Rico*, 470 (473).

PORT COMPETITION. See COMPETITION (PORT).

PORTO RICAN RAILROADS. See also SAFETY APPLIANCES.

Described. *Safety Appliances on Railroads in Porto Rico*, 470 (473, 474).

PORTO RICO.

The Supreme Court has held that Porto Rico is an organized territory, appurtenant to, but not incorporated in, the United States. *Safety Appliances on Railroads in Porto Rico*, 470 (472).

Physical features referred to. *Id.* (472).

POTENTIAL COMPETITION. See COMPETITION (POTENTIAL).

POWER OF COMMISSION. See also JURISDICTION.

Regulatory power of Commission not limited to "basic" rates. *Rates via Rail-and-Lake Routes*, 302 (316).

POWER OF CONGRESS. See THROUGH ROUTES AND JOINT RATES.

PREFERENCES AND PREJUDICES. See also DISCRIMINATION; RELATIVE RATES.

Articles:

A rate on burlap bags from New Orleans to Dallas in excess of 5 cents over import rate on burlap will be unduly preferential of shippers of the latter commodity. *New Orleans Joint Traffic Bureau v. A. & S. Ry. Co.* 444 (448).

Rates on polished building marble and dressed building marble higher than on polished building stone and dressed building stone will be unjustly discriminatory. *Drake Marble & Tile Co. v. N. P. Ry. Co.* 512 (516); *Drake Marble & Tile Co. v. G. N. Ry. Co.* 516 (519).

Localities:

Rate on cast-iron pipe and fittings from Anniston and Bessemer, Ala., to El Segundo, Cal., higher than from competing points of production in the east, found unjustly discriminatory. *U. S. Cast Iron Pipe & Foundry Co. v. S. Ry. Co.* 75 (76).

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

Rate on packing-house products, Houston, Tex., to New Orleans, La., not found unjustly discriminatory. Complainant's admission that it does not meet competition in marketing packing-house products in New Orleans renders allegation of discrimination groundless. *Houston Packing Co. v. I. & G. N. Ry. Co.* 584 (585).

Combination less-than-carload rate on writing paper from Adams, Mass., to Philadelphia, Pa., routed by way of Sixtieth Street, New York City, not shown to be unduly prejudicial. *Brown Paper Co. v. B. & A. R. R. Co.* 586.

Rates on potatoes from Wisconsin and other producing territory to Topeka, Kans., found unjustly discriminatory as compared to rates to competing jobbing points. *Topeka Traffic Asso. v. A. & W. Ry. Co.* 598 (601).

Through rate on lumber from Couderay, Wis., to various points not unjustly discriminatory or unduly prejudicial. *Bekkedal v. O., St. P., M. & O. Ry. Co.* 611 (612).

Maintenance of any differential in favor of Coal Creek district of Tennessee on traffic destined to Carolina territory is unduly preferential of Coal Creek district and unduly prejudicial of southwestern Virginia mines. *Bituminous Coal Rates to the Southeast*, 652 (660).

Rates between Louisville and Shelbyville, Ky., found unjustly discriminatory as compared with rates to and from Georgetown, Midway, Lexington, and Paris, Ky. *Shelbyville Business Men's Asso. v. L. & N. R. R. Co.* 675.

Comparison of rates applying north from Knoxville with those applying south from Cincinnati does not establish proof of discrimination against Knoxville, as the adjustment of rates in central Kentucky is the result of competitive conditions which defendants are unable to control. *Traffic Bureau of Knoxville, Tenn., v. C., N. O. & T. P. Ry. Co.* 687 (691).

Unjust discrimination against one point can not be permitted to continue for fear that its elimination will lead to demands from other points. *Paducah Board of Trade v. I. C. R. R. Co.* 719 (725).

Defendants unduly discriminate against Paducah to the undue preference and advantage of Cairo by maintenance of more favorable rates on logs and lumber to the latter point. *Id.* (725).

The record shows clearly that commodity rates on harness, saddlery, and saddlery hardware constitute a departure from the usual basis and result in an undue preference of manufacturing points from which they apply. *Harness to Oklahoma*, 726 (729).

Complainants' allegations that rates on lumber and forest products from points in California and southern Oregon to the east are unduly prejudicial against them in favor of north Pacific coast shippers and Mexican competitors, not sustained. *Big Basin Lumber Co. v. S. P. Co.* 730 (736, 738).

Fact that territory of origin is separated from territory of destination by the Ohio River should not be accepted as a justification for perpetuating an unjust discrimination. *Paducah Board of Trade v. C., B. & Q. R. R. Co.* 743 (752).

Unjust discrimination against Paducah, Ky., in favor of Cairo, Ill. *Id.* (752).

Refusal to permit milling or handling of grain in transit at Paducah, Ky., upon same terms as at Cairo, Ill., results in unjust discrimination. *Id.* (758-759).

PREFERENCES AND PREJUDICES—Continued.**Localities—Continued.**

Class and commodity rates from Paducah to Arkansas, Oklahoma, Louisiana, and Texas points on and south of the Memphis-Little Rock line: the Rock Island held unjustly discriminatory to extent they exceed rates in effect from Cairo. *Paducah Board of Trade v. A. & S. Ry. Co.* 760 (767).

Persons:

Complaint alleging undue preference of the El Paso Union Stockyard Company in the handling of cattle dismissed because at hearing an understanding was reached satisfactory to complainant. *Cattle Raisers Stockyards Asso. v. E. P. & S. W. Co.* 284.

The L. S. & M. S. ordered to cease and desist from giving stone company and its traffic an undue preference and advantage and subjecting quarry company to undue prejudice and disadvantage. *Lorain & Southern R. R. Co. Case*, 497 (501).

State and Interstate:

Complainants not shown to have been unduly prejudiced by fact that refunds were paid upon intrastate shipments during injunction period in Minnesota. *Holmes & Hallowell Co. v. G. N. Ry. Co.* 627 (645).

Unjust discrimination is caused by the relation of coal rates in Minnesota territory, and complaints which involve rates on coal will be held for further hearing. *Id.* (649).

PRESUMPTION. See **DAMAGES**; **DISCRIMINATION**.

PRICE. See also **F. O. B. DESTINATION**.

Price of oil at Portland fluctuates from time to time, and is based on price at Port Costa, plus cost of transportation. *S. P. Co. Ownership of Oil Steamers*, 525 (533).

PRIVATE CARS. See **DEMURRAGE**.

PRIVATE SIDINGS.

Nothing of record to justify view that placing of cars on industrial sidings served by defendants is not a substantially similar service to that which they perform on their team tracks. *Boardman Co. v. S. P. Co.* 81 (85).

PRODUCTION.

Bauxite ore. 1915 Western Rate Advance Case—Part II, 114 (141). Of tobacco in the United States amounts to about 500,000 tons annually. *Official Classification Ratings*, 166 (180).

PROHIBITIVE RATES.

Rail rates on oil between certain points on Pacific coast are prohibitive. *S. P. Co. Ownership of Oil Steamers*, 523 (535).

Complainant shows that his shipments have practically ceased since rates assumed took effect; but the reasonableness or unreasonableness of a rate does not depend exclusively upon shippers' ability profitably to market their products under it. *Riddle v. N. C. & St. L. Ry.* 602 (603).

PROPORTIONAL RATES.

Proposed proportionals from Thebes to Milwaukee of necessity vary according to origin to each particular shipment, are compelled by observance of long-and-short-haul clause, and are merely a means of equalization of joint through rates via other routes. *Lumber to Wisconsin Points*, 193 (200-201).

The 2-cent proportional rate from East St. Louis to Cairo should not be isolated for separate examination when the hauls involved are long, especially since it is but a small factor of through rates considerably higher. *Paducah Board of Trade v. C., B. & Q. R. R. Co.* 743 (756).

PUBLIC INTEREST.

Record fails to show that public interest demands establishment of joint rates from eastern points to Pine Bluff via Memphis in connection with packet companies operating between Memphis and Pine Bluff. *Pine Bluff Traffic Bureau v. L. & N. R. R. Co.* 218 (223).

Respondents' operation of steamships between Flavel, Oreg., and San Francisco is in the interest of the public and of advantage to the convenience and commerce of the people. *Steamship "Great Northern"*, 260 (263).

Present operation of steamship company as a whole is in. *Ocean S. S. Co. of Savannah*, 422 (429).

Continued operation of the boat as at present conducted is in the interest of the public. *The Boat "H. B. Plant"*, 453 (456).

Record shows that the operation of the Cumberland line has been beneficial to the public. *Cumberland Transp. Co. v. C., N. O. & T. P. Ry. Co.* 463 (469).

PUBLIC POLICY.

It is not the function of the Commission to prescribe either public policy or the managerial policy of carriers. *Western Passenger Fares*, 1 (41).

PUBLIC USE. See INVESTMENT.**PURCHASE AND SALE. See CONTRACT.****RAIL-AND-LAKE RATES.**

Increased class and commodity rates between points in New England and Middle Atlantic States, and the West, and increase of 1 cent on all east-bound-freight paying less than sixth class from various points in Chicago switching district, not justified. *Rates via Rail-and-Lake Routes*, 302 (316, 317).

Rail-and-water rates via Memphis to Pine Bluff would have to be considerably lower than all-rail rates in order to induce shippers to use them. *Pine Bluff Traffic Bureau v. L. & N. R. R. Co.* 218 (221).

All-rail rates are said to be determined to some extent by; but it is said that coal shipped by rail usually arrives in somewhat better condition than that shipped by rail and water. *Coal to Rhode Island Points*, 650, 651.

"RAILROAD."

Car ferry of the F. E. C. Ry. between Key West and Havana is such as is embraced in the term. *Peninsular & Occidental S. S. Co.* 432 (435).

RATE COMPARISONS. See also RELATIVE RATES.

Voluminous exhibits filed showing that class rates from Louisville to Shelbyville, Ky., are somewhat lower than rates for similar distances elsewhere on the L. & N. and on lines of other southern carriers. Such tables may easily be prepared, and they are ordinarily not of controlling influence. *Shelbyville Business Men's Assn. v. L. & N. R. R. Co.* 675 (679, 680).

A mere comparison of two dissimilar rates for equal distances, even in same general territory, does not always suffice to prove one unreasonable or discriminatory, as conditions and circumstances which surround the one may be entirely absent from the other. *Traffic Bureau of Knoxville, Tenn., v. C., N. O. & T. P. Ry. Co.* 687 (690).

RAILROAD COMPETITION. See COMPETITION (RAILROAD).**RAW MATERIAL. See also MANUFACTURED ARTICLES.**

Leaf tobacco as it moves in commerce is hardly a raw material. *Official Classification Ratings*, 166 (183).

REASONABLE RATES.

All rates subject to the act, no matter for what service performed, must be just and reasonable. *New York-Jersey City Ferry Rates*, 103 (113).

What is a reasonable rate from one section might be far from a reasonable rate from another section served by a different carrier and involving an entirely different movement to reach the same markets. *Bituminous Coal Rates to the Southeast*, 652 (663).

REASONABLE RATES—Continued.

A rate which is merely nonconfiscatory may fall short of being entirely just and reasonable. *Holmes & Hallowell Co. v. G. N. Ry. Co.* 627 (635).

REASONABLENESS OF RATES.

Rates found unreasonable. *Bergman & Co. v. C. & N. W. Ry. Co.* 71; *American Creosote Works v. M. L. & T. R. R. & S. S. Co.* 238; *Pitt Gas Coal Co. v. I. R. R. Co.* 240; *Milliken Refining Co. v. M., K. & T. Ry. Co.* 295; *Omaha Packing Co. v. C., M. & St. P. Ry. Co.* 378; *Empire Cotton Oil Co. v. A., B. & A. R. R. Co.* 394; *Standard Paint Co. v. S. P. Co.* 405; *Kosmos Portland Cement Co. v. I. C. R. R. Co.* 449; *Drake Marble & Tile Co. v. G. N. Ry. Co.* 517; *McLean Lumber Co. v. A., T. & N. Ry.* 520; *Davis v. M., St. P. & S. S. M. Ry. Co.* 523; *Taylor & Co. v. Wabash R. R. Co.* 540; *Pilcher Hdwe. Co. v. C. & N. W. Ry. Co.* 542; *Taffe v. Am. Exp. Co.* 544; *Elm City Lumber Co. v. A. C. L. R. R. Co.* 571; *Hossifous v. P., C., C. & St. L. Ry. Co.* 575; *Joseph Iron Co. v. M. L. & T. R. R. & S. S. Co.* 591; *Topeka Traffic Asso. v. A. & W. Ry. Co.* 593; *Bekkedal v. C. St. P., M. & O. Ry. Co.* 611; *Chautauqua Refrigerating Co. v. Erie R. R. Co.* 625; *Bituminous Coal Rates to the Southeast*, 652; *Traffic Bureau of Knoxville v. Tenn., v. C., N. O. & T. P. Ry. Co.* 687; *Pacific Motor Supply Co. v. A., T. & S. F. Ry. Co.* 703; *Paducah Board of Trade v. I. C. R. R. Co.* 719.

Rates not found unreasonable. *Public Service Commission of Missouri v. Wabash R. R. Co.* 297; *Omaha Grain Exchange v. M. & O. R. R. Co.* 363; *Stearns & Culver Lumber Co. v. L. & N. R. R. Co.* 376; *Hottelet & Co. v. C. & O. Ry. Co.* 382; *Watrous Acme Mfg. Co. v. P. M. R. R. Co.* 398; *Brown & Sons Lumber Co. v. L. & N. R. R. Co.* 507; *Cape Girardeau Portland Cement Co. v. St. L. & S. F. R. R. Co.* 538; *Indiana Veneer & Lumber Co. v. St. L., I. M. & S. Ry. Co.* 579; *Bradley Timber & Railway Supply Co. v. C. N. Ry. Co.* 583; *Houston Packing Co. v. I. & G. N. Ry. Co.* 584; *Brown Paper Co. v. B. & A. R. R. Co.* 586; *New Monarch Machine & Stamping Co. v. I. H. B. R. R. Co.* 589; *Riddle v. N., C. & St. L. Ry.* 602; *Colorado Tent & Awning Co. v. D. & R. G. R. R. Co.* 617; *Holmes & Hallowell Co. v. G. N. Ry. Co.* 627; *Shelbyville Business Men's Asso. v. L. & N. R. R. Co.* 675 (680); *Ludowici-Celadon Co. v. M., K. & T. Ry. Co.* 709; *Passow & Sons v. C., M. & St. P. Ry. Co.* 711; *Abel & Roberts v. M. P. Ry. Co.* 712; *Cumberland Glass Mfg. Co. v. P. R. R. Co.* 714; *Oden-Elliott Lumber Co. v. A., B. & A. R. R. Co.* 717; *Big Basin Lumber Co. v. S. P. Co.* 730 (733).
Issue of reasonableness to be determined in a supplemental hearing. *Markle Co. v. L. V. R. R. Co.* 441 (443); *Plymouth Coal Co. v. P. R. R. Co.* 457 (459); *Red Ash Coal Co. v. C. R. R. Co. of N. J.* 460 (462).

REBATES. See also CONCESSIONS.

By paying or permitting to be paid to industrial line more than would be just and reasonable, trunk lines may be giving controlling industry a rebate. *Chicago, West Pullman & Southern R. R. Co. Case*, 408 (416).

RECEIVERS.

Roads now being operated by receivers and interested in proposed increased fares. *Western Passenger Fares*, 1 (11).

RECOMMENDATIONS.

Recommendation in Commission's 29th annual report that trains composed of cane cars on Porto Rican railroads should be excepted from provisions of safety appliance acts relating to power brakes, referred to. *Safety Appliances on Railroads in Porto Rico*, 470 (476).

RECONSIGNMENT.

Tariffs authorizing, under certain circumstances, a charge of \$2 per car for reconsigning coal at Detroit to points within the switching limits, did not make the imposition of the charge conditional upon consignee at Detroit having first been notified of the arrival of the car at Toledo. Charges not unreasonable and reparation denied. *Detroit Reconsigning Case*, 274.

RECONSIGNMENT—Continued.

No logical force in a suggestion which contemplates that carriers should, in effect solicit advance orders for reconsignments which shippers might possibly desire to make. *Id.* (281).

Coal forwarded from Dell Rapids to Sioux Falls, S. Dak., under reconsigning order which provided that order was not to be executed unless lowest published rate from Roosevelt, Tenn., could be applied. Local rate collected. Complainant did not demand return of shipment to Dell Rapids without expense but accepted delivery. Act not violated. *Reeves Coal Co. v. C., M. & St. P. Ry. Co.* 707 (708).

REDUCED FARES.

Until Congress shall specifically by statute include school children within classes to which carriers may accord reduced rates of fare, Commission is disposed not to recede from its findings that commutation school tickets are unduly discriminatory. *Mace v. P. R. R. Co.* 268 (273).

REDUCTION IN RATES. See also VOLUNTARY REDUCTION.

Rate of 17½ cents on lumber from Couderay, Wis., to Boscobel and other Wisconsin points found unreasonable to extent it exceeds 12½ cents. *Bekkedal v. C., St. P., M. & O. Ry. Co.* 611 (614).

Rate from Appalachia and Dante districts, comprising the southwestern Virginia fields, to Spartanburg should not exceed \$1.85 per ton, and should in no event exceed the rate from the Coal Creek district. *Bituminous Coal Rates to the Southeast*, 652 (659).

Rate from Pocahontas and New River districts to Lynchburg, Va., reduced from \$1.50 to \$1.40 per ton. *Id.* (667).

REFRIGERATION.

Charges on bananas from Galveston, Tex., to Livingston, Mont., incurred en route at three points, not found unreasonable merely because charges imposed by other roads were based on amount of ice actually used and defendant subsequently applied this basis from Galveston. *Wattam v. N. P. Ry. Co.* 101 (102).

Refrigeration charges on apples from Crozet, Va., to Chicago, Ill., iced initially and not reiced in transit, not found unreasonable. *Smith v. C. & O. Ry. Co.* 604.

Subsequent to hearing the C. & O. filed a tariff cancelling charges here complained of and establishing instead a charge of \$2.50 per ton for actual weight of ice furnished. *Id.* (606).

REFRIGERATOR CARS. See also CARS.

Moisture from ice getting into insulation causes deterioration. *Eagle Ice Co. v. C., M. & St. P. Ry. Co.* 250 (257).

REFUNDS.

Paid upon intrastate shipments during injunction period in Minnesota. *Holmes & Hallowell Co. v. G. N. Ry. Co.* 627 (645).

REFUSAL.

Carrier's agent refused to forward car as directed by shipper, and car was delayed at point of origin. Demurrage accruing held unlawful. *Beekman Lumber Co. v. M. P. Ry. Co.* 400.

Consignee deferred unloading first car until second car arrived. Demurrage charges held not unlawful. *Darling & Co. v. P., C., C. & St. L. Ry. Co.* 401.

REHEARING.

Commission refuses to modify its order denying application of Lehigh Valley R. R. as to its lake line service. *Lake Line Applications Under Panama Canal Act*, 77.

Finding in original report that complainants were entitled to reparation reversed and claim for reparation denied because of failure to make proper showing of damage on particular shipments upon which reparation is claimed. *Worn v. B. & L. R. R. Co.* 283.

REHEARING—Continued.

Upon rehearing, held, that between points involved buckwheat and corn flour should not be rated higher than wheat flour. Rates on Buckwheat and Corn Flour, 364.

Davis Milling Co. case, Docket 5061, unreported, reopened upon Commission's own motion. *Id.* (366).

Southern Pacific does not and may not compete with steamers of Associated Oil Co. so long as their respective operations remain as at present. Continued ownership and operation will not be in violation of the act. *S. P. Co. Owners of Oil Steamers*, 528.

Upon rehearing, held, that defendant's failure to properly advise complainant as to route traversed by coal from Roosevelt, Tenn., to Dell Rapids, S. Dak. and subsequent failure to strictly observe terms of complainant's reconsigning order was not in violation of the act. *Reeves Coal Co. v. C., M. & St. P. Ry. Co.* 77.

RELATIVE ADJUSTMENT.

General basis for constructing through rates from eastern rate territories to points in eastern Colorado, western and central Kansas, is to add fixed arbitrariness to rates applicable from Mississippi River. *Colorado Class Rates*, 203 (207).

A general rate adjustment, however fair for the major portion of traffic moving thereunder, does not justify an unreasonable difference in rates between a producing point on south bank and one a few miles north of the river. *Kansas Portland Cement Co. v. I. C. R. R. Co.* 449 (452).

Commission not concerned with relationship between total in and out rates through Chicago and in and out rates through Cincinnati. *Broom Corn to Cincinnati, Ohio*, 482 (483).

Relationship of class rates from East St. Louis and Louisville to Cincinnati will not be changed. *Id.* (484).

Evidence shows a competitive adjustment of rates with respect to rates on coal to Minnesota points, but is insufficient to afford a clear understanding of circumstances which are controlling in the relationship. *Holmes & Hallowell Co. v. G. N. Ry. Co.* 627 (644).

Adjustment which will afford a more equitable relationship between the Pochontas and Coal Creek districts in the states of North Carolina and South Carolina, prescribed. *Bituminous Coal Rates to the Southeast*, 652 (664).

Rates from Coal Creek must in the main serve as a guide to carriers in determining proper rates from Virginia and West Virginia fields. *Id.* (668).

Rates from Michigan field to destinations in Oklahoma should not exceed rates from Chicago by more than 2½ cents and rates from Ohio producing points should not exceed those from Chicago by more than 3½ cents. *Salt to Oklahoma*, 699.

Cairo and Paducah are so similarly situated that rates through Paducah should not exceed rates through Cairo. Higher rates from points immediately north of Cairo to Paducah may be warranted. *Paducah Board of Trade v. C., B. & Q. R. R. Co.* 743 (752).

RELATIVE RATES. See also PREFERENCES AND PREJUDICES (LOCALITIES): RATE COMPARISONS.

Fares in other territories. Reason assigned for the relatively high basis for interstate fares to and from points in Nevada and Arizona is the sparsity of population and scarcity of local passenger traffic. *Western Passenger Fares*, 1 (31).

On all sides of territory principally affected by proposed increases the standard fares, both state and interstate, are generally upon a higher level. *Id.* (44).

Rate comparisons fail to show proposed increased rates are unreasonable. *Peaches from Missouri Points*, 89 (90).

Rate comparisons, where points selected are on outer margins of two large basins, are not helpful. *Id.* (91).

RELATIVE RATES—Continued.

- Rate on bauxite ore from Bauxite to East St. Louis compared with rates to Marysville, Tenn., Joplin, Mo., and Coffeyville, Kana. 1915 Western Rate Advance Case—Part II, 114 (145).
- Proportionals from Thebes compared with rates from Evansville and East St. Louis. Lumber to Wisconsin Points, 198 (201).
- Increased rates from Arkansas and Louisiana do not appear to be unreasonable when compared with rates from Georgia, Florida, and Alabama to Washington and Baltimore. Lumber Rates to Eastern Cities, 212 (217).
- Rates from various territories to Pine Bluff, Ark., which are joint through all-rail, all-rail combinations, and rail-and-river combinations, compared. How much lower than all-rail rates the rail-and-water rates should be can not be determined. Pine Bluff Traffic Bureau v. L. & N. R. R. Co. 218 (221).
- Rates on lumber and timber from San Pedro and from Williams to Bisbee, Globe, and Ray Junction, Ariz., compared. McCormick & Co. v. S. P. Co. 234 (236).
- Reasonableness of rate on ice from certain Wisconsin points may be tested to some extent by comparisons with rates on ice for substantially similar hauls to Chicago. Eagle Ice Co. v. C., M. & St. P. Ry. Co. 250 (256).
- Numerous rate comparisons showing rate adjustment from various apple-producing sections to common markets not supported by evidence showing that conditions were similar to those obtaining in connection with traffic from Missouri Valley points. Public Service Commission of Missouri v. Wabash R. R. Co. 297 (299).
- Relationships between rates to Salt Lake City and San Francisco on empty carriers from various stations compared. Rates on Tin Cans and Other Commodity, 260 (361, 362).
- Rates on glass bottles from Dunbar, W. Va., to Midway and Frankfort, Ky., made in combination on Louisville and Lexington, are unreasonable, because rates to those points do not bear a reasonable relation to rates for long hauls to the basing points. Axton v. K. & M. Ry. Co. 389 (393).
- Rates on pickles from New Lisbon, Wis., to Chicago, found unjustly discriminatory in favor of Mauston, Wis. National Pickle & Canning Co. v. C., M. & St. P. Ry. Co. 403.
- Rate from East St. Louis, Ill., to Frankfort, Ky., shown to compare favorably with rates to points in c. f. a. territory for similar distances. Broom Corn to Frankfort, Ky. 485 (487).
- Rates from Brownsville compared with rates from Memphis and from Covington, Ripley, and Dyersburg, Tenn., Held, not unreasonable. Brownsville Cotton Oil & Ice Co. v. C., R. I. & P. Ry. Co. 503 (504, 506).
- Identical rates have applied from Milwaukee, Manitowoc, and Chicago to eastern markets for many years. Grain from Manitowoc, Wis. 549 (553).
- Rates on logs to St. Louis from Haynes and McGehee, Ark., compared with rates from Snow Lake and Arkansas City on basis of relative ton-mile earnings; but this is not sufficient to show that rates assailed were intrinsically unreasonable. Indiana Veneer & Lumber Co. v. St. L., I. M. & S. Ry. Co. 579 (581).
- Complaint filed because rate on lumber from Beaudette, Minn., to Vincennes, Ind., was not reduced equally at same time rate to Chicago was reduced, dismissed. Bradley Timber & Railway Supply Co. v. C. N. Ry. Co. 583.
- Rates on potatoes from Wisconsin and other producing territory to Topeka, Kans., not to exceed rates to Kansas City by more than 4 cents, prescribed. Topeka Traffic Assn. v. A. & W. Ry. Co. 598 (601).
- Rates on sand and gravel from Estill Springs and Henry's Sandcut, Tenn., to various points, not found unreasonable as compared with rates between other points. Riddle v. N., C. & St. L. Ry. 602.

RETURNED EMPTIES.

Proposed adjustment of rates on empty carriers, returned, found just and reasonable, and tariff permitted to be filed. Rates on Tin Cans and Other Commodities, 360.

In principle rates should be no lower on an empty carrier, returned, than on a similar secondhand empty carrier. The return element should be disregarded. *Id.* (362).

REVENUE.

Evidence shows a diminished compensation for service. Western Passenger Fares, 1 (11).

Total passenger revenue with territory affected by proposed increases. *Id.* (4).

Comparisons of revenue per ton-mile and per passenger-mile. *Id.* (5).

From intrastate passenger traffic within states involved is approximately 96 per cent of that from interstate traffic. *Id.* (41).

Average receipts per passenger-mile in a given territory may diverge widely from standard fare per mile in same territory. *Id.* (43).

From ferry service. New York-Jersey City Ferry Rates, 103 (108).

Other things being equal, carriers would be entitled to a somewhat greater revenue per car-mile for haul from Bauxite to East St. Louis than for the longer haul to Maryville, Tenn. 1915 Western Rate Advance Case—Part II, 114 (145).

Nonalcoholic beverages stand on a relatively high basis as revenue producers at present ratings. Official Classification Ratings, 166 (172).

Information in form of estimates based on past shipments of tobacco not sufficient to show that revenues under present ratings are other than just and fair to carriers. *Id.* (182).

RISK.

Flue lining, liability of breakage. 1915 Western Rate Advance Case—Part II, 114 (134).

Little risk in transportation of beer in carloads. Official Classification Ratings, 166 (170).

There is but little risk in shipping leaf tobacco in any of its forms. *Id.* (181).

There is practically no danger of loss or damage in transportation of either flat or round wire. American Steel & Wire Co. v. A. & V. Ry. Co. 525 (526).

ROAD AND EQUIPMENT. See COST OF ROAD AND EQUIPMENT.**ROUTES.**

Exhibit showing standard and differential routes to Chicago. Appendix. Rates via Rail-and-Lake Routes, 302 (322).

Nothing can be said for a differential relation which permits some routes to grow with the business of the country and keeps others at a standstill. *Id.* (316).

Combination rate on writing paper from Adams, Mass., to Philadelphia, Pa., not unreasonable as compared with joint commodity rates applicable via four other routes. Brown Paper Co. v. B. & A. R. R. Co. 586 (588).

The existence of a longer and somewhat more expensive route entirely over the rails of the Southern Railway and its subsidiary can not be considered as in any manner justifying the maintenance of an unreasonable rate over the shorter line of the C., C. & O. Bituminous Coal Rates to the Southeast, 652 (658).

Route through St. Paul, Va., to points on the C., C. & O. should be opened and joint rate to such points from the Pocahontas district and to Spartanburg applicable thereover should not exceed \$2.35 per ton. *Id.* (666).

No apparent necessity for establishment of an additional route from Coffeyville, Kans., to Sioux City, Iowa; and mere fact that other routes were available at a lower rate than rate charged held not sufficient to prove charges assailed were unreasonable or unduly prejudicial. Ludowici-Celadon Co. v. M., K. & T. Ry. Co. 709 (710).

ROUTES—Continued.

Rate on brick from Buffalo, Kans., to Beatrice, Nebr., via the M. P. and the C., B. & Q. railroads, not found unreasonable. Convenient routes were available by which lower rate applied. The existence of lower rates over routes other than a particular route of movement and subsequent reduction of rate over route of movement to same level is not alone sufficient to establish the unreasonableness of the previous rate. *Abel & Roberts v. M. P. Ry Co* 712 (713).

Finding in previous report that "the natural route from points west of the Mississippi River here involved is via Memphis rather than via Cairo" not modified. Route to Paducah in which the Rock Island participates is the natural and logical route. *Paducah Board of Trade v. I. C. R. R. Co.* 719 (721, 724).

In determining the relative reasonableness or practicability of two routes operating conditions are entitled to consideration. *Id.* (722).

ROUTING. See also MISROUTING.

Definite specification by shippers of more expensive of two or more available routes relieves carriers of duty of forwarding shipments over cheapest route. *Baker-Wakefield Cypress Co. v. T. & P. Ry. Co.* 546.

Car of lumber routed care of "Transit Ry.," Detroit, Mich., a nonexistent carrier. Demurrage which accrued while carrier awaited disposition orders held not unlawful. *Heyser Lumber Co. v. K. & W. V. R. R. Co.* 609.

RULES OF PRACTICE.

Rule III, cited. *Elm City Lumber Co. v. A. C. L. R. R. Co.* 571.

SAFETY AND COMFORT. See PASSENGER TRAIN SERVICE.**SAFETY APPLIANCES.**

Porto Rican trains composed of cars used exclusively for transportation of sugar cane might well be excepted, as recommended to Congress, from provisions relating to power brakes; but pending action by Congress respondents' equipment must be made to conform with requirements of safety appliance acts. *Safety Appliances on Railroads in Porto Rico*, 470.

Equipment of Porto Rican railroads. *Id.* (475).

Present acts neither make exception of cane cars from provisions relating to power brakes nor confer upon Commission the power to make it. *Id.* (476).

Order entered vacating, as of January 1, 1917, the order of April 17, 1913, in so far as it extends time for full compliance with safety appliance acts. *Id.* (477).

SALARIES AND WAGES. See LABOR; WAGES.**SCHOOL CHILDREN.**

Until Congress shall specifically by statute include such traffic within classes to which carriers may accord reduced rates of fare the Commission is disposed not to recede from its findings that commutation school tickets are unduly discriminatory. *Mace v. P. R. R. Co.* 268 (273).

SCRAP IRON.

Charges on pieces of steel left after automobile bodies had been cut from original steel sheets, two-thirds of which was available for further use, held not unreasonable, as shipments were not composed of scrap iron. *Watrous Acme Mfg. Co. v. P. M. R. R. Co.* 398.

SECONDHAND ARTICLES.

Ratings on 1. c. 1. shipments of dynamos and electric transformers for scrap purposes held not unreasonable. Commission has repeatedly declined to sanction the principle that old and secondhand articles are necessarily entitled to lower ratings than same articles when new. *Industrial Traffic Assn. v. N. Y. C. & H. R. R. R. Co.* 607 (608).

SECTION 1.

Detroit Reconsigning Case, 274 (276); *Peninsular & Occidental S. S. Co.* 433 (435); *Cumberland Transp. Co. v. C., N. O. & T. P. Ry. Co.* 463 (467).

SECTION 3. *See also* PREFERENCES AND PREJUDICES.

Lorain & Southern R. R. Co. Case, 497 (501); New Orleans Joint Traffic Bureau v. A. & S. Ry. Co. 444 (448).

SECTION 4. *See also* LONG AND SHORT HAUL; THROUGH AND LOCAL.

1915 Western Rate Advance Case—Part II, 114 (135); Lumber to Wisconsin Points, 198 (200); Lumber Rates to Eastern Cities, 212 (214); Milliken Refining Co. v. M., K. & T. Ry. Co. 295; East Jersey R. R. & T. Co. v. C. R. R. Co. of N. J., 357 (358); Stone to Des Moines, Iowa, 372; Hottelet & Co. v. C. & O. Ry. Co. 382; Axton v. K. & M. Ry. Co. 389 (392); Empire Cotton Oil Co. v. A., B. & A. R. R. Co. 394; National Pickle & Canning Co. v. C., M. & St. P. Ry. Co. 403 (404); Kosmos Portland Cement Co. v. I. C. R. R. Co. 449 (452); Brownsville Cotton Oil & Ice Co. v. C., R. I. & P. Ry. Co. 503 (506); Taylor & Co. v. Wabash R. R. Co. 540; Grain from Manitowoc, Wis., 549 (556); Elm City Lumber Co. v. A. C. L. R. R. Co. 571 (572); Hossafous v. P., C., C. & St. L. Ry. Co. 575; Indiana Veneer & Lumber Co. v. St. L., I. M. & S. Ry. Co. 579 (580); Joseph Iron Co. v. M. L. & T. R. R. & S. S. Co. 591; Brown-Roberts Hdwe. & Supply Co. v. A. & V. Ry. Co. 671 (673); Shelbyville Business Men's Asso. v. L. & N. R. R. Co. 675 (683); Ludowici-Celadon Co. v. M., K. & T. Ry. Co. 709 (710); Cumberland Glass Mfg. Co. v. P. R. R. Co. 714.

SECTION 5. *See also* PANAMA CANAL ACT.

Lake Line Applications Under Panama Canal Act, 77 (78); Steamship "Great Northern," 260; Ocean S. S. Co. of Savannah, 422; Peninsular & Occidental S. S. Co. 432 (435); The Boat "H. B. Plant," 453; S. P. Co. Ownership of Oil Steamers, 528.

SECTION 6.

New York-Jersey City Ferry Rates, 103 (106); Pine Bluff Traffic Bureau v. L. & N. R. R. Co. 218 (224); Black & White River Transp. Co. v. M. P. Ry. Co. 244 (248); Divisions of Joint Rates on Railway Fuel Coal, 265; Detroit Reconsigning Case, 274 (276); Ocean S. S. Co. of Savannah, 422 (430); Brown & Sons Lumber Co. v. L. & N. R. R. Co. 507 (509); Keystone Wood Co. v. P. R. R. Co. 622.

SECTION 13.

McCormick & Co. v. S. P. Co. 234 (235).

SECTION 15.

Coal to Kentucky Points, 194 (196); Union Lumber Co. v. G., C. & S. F. Ry. Co. 225 (226); Bituminous Coal Rates to the Southeast, 652 (658); Paducah Board of Trade v. I. C. R. R. Co. 719 (721).

SECTION 20.

Black & White River Transp. Co. v. M. P. Ry. Co. 244 (246).

SELLING PRICE. *See* DAMAGES; F. O. B. DESTINATION.

SEPARATION OF EXPENSES.

Separation of operating expenses between freight and passenger. Western Passenger Fares, 1 (12).

Apportionment of maintenance of way and structures expenses between passenger and freight becomes a question of great moment in determining the relative profitableness of freight and passenger business. *Id.* (12).

Separation of operating expenses between freight and passenger. (Wetting Exhibit No. 1, 46 roads.) Table No. 12. *Id.* (14).

Operating results and ratio of net operating income to cost of road and equipment shown separately for freight and passenger service. Table No. 13. *Id.* (16).

Methods used for division of maintenance of way expenses discussed, but Commission is not prepared to approve in its entirety any of the methods offered by the carriers. *Id.* (18-19).

STATE RATES—Continued.

Commission can not sanction interstate fares that are higher than are reasonable for service performed because intrastate fares are shown to be unduly low. *Id.* (42).

Proposed cancellation of interstate application of certain intrastate rates on lumber between points in Louisiana not justified. 1915 Western Rate Advance Case—Part II, 114 (163).

Contention of interveners that complaint was filed for the benefit of defendants and for the purpose of obtaining an increase in intrastate rates in Arizona is not supported by the record. *McCormick & Co. v. S. P. Co.* 234 (235).

Record inadequate for final determination of what rates or relationship of rates from San Pedro, Cal., to Arizona points should be prescribed. In the existing interstate and intrastate rates there is no uniformity in consideration given factors of distance and of more than one-line hauls. *Id.* 234 (237).

Intrastate rate charged on damaged cotton from Greenville and Galveston, Tex., was applicable, and complaint dismissed for want of jurisdiction. *Kempner v. M., K. & T. Ry. Co.* 396 (397).

Rate from East St. Louis to Evansville, Ind., and intermediate points are said to be affected by low State scale of rates in Illinois. Broom Corn to Frankfort, Ky., 485 (488).

The Minnesota rate legislation has brought about reductions from the head of the Lakes to points in Minnesota, both by intrastate and interstate lines, but has also had the effect of making certain inequalities upon these movements which did not formerly exist. *Holmes & Hallowell Co. v. G. N. Ry. Co.* 627 (632).

Commission has always given due consideration and weight to State-made rates, but under the duty imposed upon it by law the Commission must determine the reasonableness of interstate rates from all pertinent facts and can not accept rates prescribed for intrastate transportation as conclusive. *Id.* (635).

Testimony indicates that the Minnesota rate schedules were not so made as to fix reasonable rates, but rather to establish such schedules as would in the aggregate yield a proper return upon property devoted to State traffic. *Id.* (635, 636).

Reasonableness of State rates has not been shown, and their publication from Superior under competitive conditions described does not form a basis for testing the reasonableness of the class rates here attacked. *Id.* (641).

No justification can be made for the large differences in coal rates for substantially similar distances in territory involved or for the abrupt and large difference in rates to North Dakota points as compared with rates to points in Minnesota. *Id.* (647).

STATISTICS.

General statistics respecting New England, trunk line, central, and western territories. *Western Passenger Fares*, 1 (33).

STOCKYARDS. *See also* Facilities.

Controversy arising out of a dispute between certain cattle dealers and stockyards people of El Paso and the Union Stock Yards Company, adjusted satisfactorily at hearing. *Cattle Raisers Stockyards Asso. v. E. P. & S. W. Co.* 284 (286).

STORAGE. *See also* WAREHOUSE.

Increased charges for storage in transit of apples, potatoes, onions, and celery, justified by service performed. 1915 Western Rate Advance Case—Part II, 114 (161, 162).

If storage of sugar for five months at upper lake ports is worth 85 cents per ton, there should be a charge for that service against the sugar. *Rates via Rail-and-Lake Routes*, 302 (312).

Former case in which defendant justified its refusal to continue to furnish storage bins at Perth Amboy, N. J., is controlling here. *Markle Co. v. L. V. R. R. Co.* 441 (442).

TABLES.

1. Operating ratios by groups of roads, 1901-1914. *Western Passenger Fares*, 1 (5).
 2. Comparisons of revenue per ton-mile and per passenger-mile. *Id.* (5).
 3. Labor compensation compared with total operating revenues. *Id.* (6).
 4. Taxes compared with operating revenues. *Id.* (6).
 5. Ratio of maintenance expenses to operating revenues. *Id.* (7).
 6. Per cent maintenance of road and equipment expenses combined are of cost of road and equipment. *Id.* (7).
 7. Comparison of increase in net cost of road and equipment with increase in net operating income. *Id.* (8).
 8. Net cost of road and equipment and operating income. *Id.* (8).
 9. Increase in average daily compensation of all employees. *Id.* (9).
 10. Total labor cost per train-mile and per car-mile. *Id.* (9).
 11. Total labor costs, all employees, per equated traffic unit. *Id.* (10).
 12. Separation of operating expenses. *Id.* (14).
 13. Operating results and ratio of net operating income to cost of road and equipment. *Id.* (16).
 14. Protestants' assignment of maintenance of way and structures expenses to passenger service, C. & N. W. Ry., 1913. *Id.* (21).
 15. Same, 1914. *Id.* (21).
 16. Net cost of road and equipment, etc., net operating income, ratio of net operating income to property investment for 20 roads. *Id.* (24).
 17. Ratios of expenses to revenues, passenger and freight, respectively, 1907-1914. *Id.* (28).
 18. Passenger-miles per mile of road. *Id.* (32).
 19. Population per mile of road and basis for intrastate fares. *Id.* (32).
 20. General statistics. *Id.* (33).
 21. Comparison of operating conditions on northern lines and southern lines, 1914. *Id.* (33).
 22. Seating capacity of first-class passenger cars purchased since 1907. *Id.* (35).
 23. Cost and weight of first-class passenger cars. *Id.* (36).
 - 24 to 42. Reproductions of that part of carriers' Exhibit No. 1 (witness L. E. Wetling) pertaining to group 1 roads, and supplementary to previous tables. *Appendix.* *Id.* (48-68).
 - 43 to 46. Statistics reproduced from exhibits of other witnesses. *Appendix.* *Id.* (69, 70).
 1. Exhibit showing comparisons with respect to agricultural implements, machinery, and iron and steel articles. 1915 *Western Rate Advance Case*—Part II, 114 (122).
 2. Showing how earnings on agricultural implements under proposed rates and earnings on machinery from Chicago compare with earnings from St. Louis to same destinations. *Id.* (124).
- Comparison of rates and per ton-mile revenue on brick, flue lining, sewer pipe, and class E. *Id.* (132).
- Statement of carload earnings from Chicago to Louisiana on agricultural implements, etc. *Id.* (154).

TANK CARS. See MARKED CAPACITY.

TAP LINES.

Tracks and property of tap line at Milvid, Tex., was purchased by complainant and it has not since been operated as a common carrier. Refusal to pay allowances to complainant for performing switching service for itself, not unlawful or unduly discriminatory. *Union Lumber Co. v. G., C. & S. F. Ry. Co.* 225.

TAP LINES—Continued.

Complainant is a bona fide common carrier, not associated with or controlled by any lumber interest, consequently *The Tap Line case* did not require cancellation of joint rates on lumber and other forest products. *Black & White River Transp. Co. v. M. P. Ry. Co.* 244 (246).

TARIFF LAWS.

Under Dingley tariff a duty of \$1 per ton was imposed upon foreign bauxite; the duty was removed by the present tariff law. 1915 *Western Rate Advance Case—Part II*, 114 (142).

TARIFFS. See also AMBIGUOUS TARIFFS.

Tariffs under which unlawful through charges result from application of minima expected to be corrected without order. *Minneapolis Transfer Machine Co. v. M. & St. L. R. R. Co.* 92 (95).

Published rates on petroleum tailings held lawfully applicable to shipments involved and refund of overcharges on shipments upon which fuel charges assessed will be ordered. *National Petroleum Assn. v. A., T. & S. F. Ry. Co.* Words should be employed with clear and plain meaning, and language found to define in unmistakable terms what will be transported at specified rates. *Id.* (293).

Complainants took advantage of a technical situation in tariffs to market upon lower freight rate a commodity for which they had previously been unable to find a market upon a higher rate. *Id.* (293).

The law does not contemplate that terms of a tariff should be supplemented by arbitrary practice of carriers. The tariffs should be complete. *Standard Oil Co. v. S. P. Co.* 405 (406).

Tariff was filed on less than statutory notice; but it was tendered in pursuance of expressed views of the Commission, and therefore, while technically it may have been rejected upon tender, it was allowed to become effective. *Brace & Sons Lumber Co. v. L. & N. R. R. Co.* 507 (509).

TAXES.

Portion of revenue paid for taxes. Taxes compared with operating revenue Table No. 4. *Western Passenger Fares*, 1 (6).

Evidence shows a rising scale of taxes. *Id.* (11).

Have remained almost stationary. *Rates via Rail-and-Lake Routes*, 302 (311).

TEAM TRACKS. See INDUSTRIAL TRACKS; PRIVATE SIDINGS.**TERMINAL COMPANY.**

Joint rates established in connection with, to New York should not exceed complainants' rates over other routes. *East Jersey R. R. & T. Co. v. C. R. R. Co. of N. J.* 357 (358).

TERMINAL FACILITIES.

Possibility of a recurrence of previous congestion of coal cars at Detroit terminals minimized by construction of extensive yards by the Detroit & Toledo Shore Line. *Detroit Reconsigning Case*, 274 (279).

TERMINAL SERVICES.

The right to impose a reasonable and nondiscriminatory charge in addition to the line-haul rate for terminal services performed by connecting carriers has been affirmed in numerous cases. *Boardman Co. v. S. P. Co.* 81 (85).

Connected with transportation of empty carriers, returned, is high and car loading less than the average. *Rates on Tin Cans and Other Commodities*, 360 (361).

TERMINALS.

Ship side terminals at Savannah described. *Ocean S. S. Co. of Savannah* 422 (427).

THROUGH AND LOCAL.

Joint rates on grain threshers and separators from Hopkins, Minn., to points in Ohio do not exceed aggregates of rates to and from Peoria. Unlawful through charges result from different rules and minima in western trunk line and c. f. a. territories for shipments loaded upon cars of certain lengths, and tariffs must be corrected. *Minneapolis Threshing Machine Co. v. M. & St. L. R. R. Co.* 92 (94, 95).

Discrepancy between rate charged on slag, Bessemer, Ala., to McRae, Ga., and aggregate of intermediates was protected by a fourth section application. Reparation awarded on basis of subsequently-established joint rate. *Empire Cotton Oil Co. v. A., B. & A. R. R. Co.* 394.

Rates on wooden railroad ties from St. Louis to Chicago found unreasonable to extent they exceeded aggregate of intermediate rates to and from East St. Louis. Situation voluntarily adjusted prior to filing of complaint. Reparation awarded. *Taylor & Co. v. Wabash R. R. Co.* 540 (541).

Rate on lumber from Spring Hope, N. C., to Yardley, Pa., exceeded aggregate of intermediates to and from Norfolk. Reparation awarded. *Elm City Lumber Co. v. A. C. L. R. R. Co.* 571 (572).

Joint rate on scrap iron from Houston, Tex., through New Orleans, La., to Chicago, Ill., found unreasonable to extent it exceeded combination of intermediates. Fourth section application denied. *Joseph Iron Co. v. M. L. & T. R. R. & S. S. Co.* 591.

Application for authority to continue rates on wagons to Alexandria, La., and other points in Louisiana which exceed aggregate of intermediate rates not passed upon. *Brown-Roberts Hdwe. & Supply Co. v. A. & V. Ry. Co.* 671, (674).

THROUGH RATES.

A through rate on cast iron pipe from Anniston and Bessemer, Ala., to El Segundo, Cal., can not be condemned as unreasonable. *U. S. Cast Iron Pipe & Foundry Co. v. S. Ry. Co.* 75 (76).

In cases where shippers attempt unlawfully to defeat through rates the duty is upon carriers to apply the through rates. *Lumber Rates from Newcastle, Cal.* 596 (597).

THROUGH ROUTES.

A rail carrier by participating in a through route between two termini only one of which is reached by its rails in fact serves both termini, and may compete within the meaning of section 5 with steamers operating as part of another through route between the same termini. *Peninsular & Occidental S. S. Co.* 432 (434).

THROUGH ROUTES AND JOINT RATES.

Public interest does not require the establishment of, from eastern points to Pine Bluff via Memphis in connection with packet companies between Memphis and Pine Bluff, while prevailing conditions continue. *Pine Bluff Traffic Bureau v. L. & N. R. R. Co.* 218, 223.

The establishment of a through route, like the fixing of a maximum rate for the future is an administrative function. If Congress may lawfully place upon the receiving carrier primary liability to shipper for negligence of a connecting carrier it likewise has power to establish through routes and to place same liability upon receiving carriers. *Black & White River Transp. Co. v. M. P. Ry. Co.* 244 (248).

Upon filing of a satisfactory bond by complainant, defendants will be required to establish through routes and joint rates with complainant between Cumberland River landings and interstate points on defendants' lines. *Cumberland Transp. Co. v. C., N. O. & T. P. Ry. Co.* 463.

THROUGH ROUTES AND JOINT RATES—Continued.

Transportation company operating on a navigable river is *prima facie* warranted in asking for the establishment of through routes and joint rates. *Id.* 146.
Route through St Paul, Va., to points on the C., C. & O. should be opened. Joint rate applicable thereover should not exceed \$2.35 per ton. Bituminous Coal Rates to the Southeast, 652 (666).

Establishment of through routes to Paducah from points in Arkansas and Louisiana and joint rates applicable thereto no higher than rates at present maintained to Cairo, required. Same may be established via either Memphis or Cairo. Paducah Board of Trade v. I. C. R. R. Co. 719 (725).

TICKETS. See also COMMUTATION FARES; SCHOOL CHILDREN.

Increase in prices of the 60-trip tickets and 180-trip tickets, and withdrawal of 50-trip annual ticket, justified. Mace v. P. R. R. Co. 268 (272).

TIDEWATER.

Reasonable rates on anthracite coal to tidewater f. o. b. vessels for transshipment were prescribed in former case. Markle Co. v. L. V. R. R. Co. 441; Plymouth Coal Co. v. P. R. R. Co. 457; Red Ash Coal Co. v. C. R. R. Co. of N. J. 440.

TON PER MILE REVENUE. See also AVERAGES; EARNINGS; MEASURE OF RATES.

Revenue per ton-mile and per passenger-mile compared. Western Passenger Fares, 1 (5).

By "gross ton-mile revenue," as that term is used in the record, is meant the revenue per ton-mile based upon the entire weight hauled, including weight of car. 1915 Western Rate Advance Case—Part II, 114 (120).

Comparison of rates and per ton-mile revenue on brick, flue lining, sewer pipe, and class E. *Id.* (132).

Ton-mile earnings on grain and grain products would properly be low in eastern trunk line territory because of the exceptional volume of traffic. Export Grain Case, 190 (192).

The principle that the greater the distance via the same line or route the less the revenue per ton-mile is one of general although not of universal application. McCormick & Co. v. S. P. Co. 234 (237).

TONNAGE. See also AVERAGES; VOLUME OF TRAFFIC.

Interstate lumber tonnage handled by complainant during three years following withdrawal of joint rates was approximately 25 per cent of tonnage during three years immediately preceding. Black & White River Transp. Co. v. M. P. Ry. Co. 244 (245).

The greater the differential the greater the tonnage over the lakes. In the past the lake movement has fallen off as differentials have been narrowed. Rates via Rail-and-Lake Routes, 302 (309).

Exhibit showing division of tonnage as between package and bulk freight, tonnage for year ended Dec. 31, 1914, divided as between eastbound and westbound, and classification of tonnage. *Appendix.* *Id.* (340-344).

Statement showing total tonnage of commercial coal shipped to points in North Carolina and South Carolina during the two years ended June 30, 1913. Bituminous Coal Rates to the Southeast, 652 (654).

TRACK STORAGE. See DEMURRAGE.**TRACKAGE AGREEMENT.**

Under which the C. & O. Ry. operates over the tracks of the L. & N. between Lexington and Louisville can not be used as a shield against obligations imposed by statute. Axton v. K. & M. Ry. Co. 389 (392).

Where a trunk line without unjust discrimination permits an industrial line to operate over its tracks without compensation the arrangement may be just and proper so long as it is for their mutual benefit. Chicago, West Pullman & Southern R. R. Co. Case, 403 (417).

TRACKAGE AGREEMENT—Continued.

Contract under which the C. & O. has access to Louisville, Ky., over rails of the L. & N. *Shelbyville Business Men's Asso. v. L. & N. R. R. Co.* 675 (683).

TRAINLOAD RATES.

The mere fact that certain traffic is hauled in trainload lots does not authorize the application of a basis of rates different from that applied to traffic of the same kind in single carloads. *1915 Western Rate Advance Case—Part II*, 114 (155).

TRAIN SPEED.

High velocity of passenger trains, as compared with freight trains, necessitates a better maintenance standard on that account. *Western Passenger Fares*, 1 (18).

TRANSIT FACILITIES.

Complainant manufacturers of lumber and forest products in California and southern Oregon fail to sustain their allegations that competitors are unduly preferred in transit facilities. *Big Basin Lumber Co. v. S. P. Co.* 730 (738).

TRANSIT PRIVILEGES. See also FABRICATION-IN-TRANSIT.

Charges on lumber from Bayou Sale and Baldwin, La., to milling points where it was planed or dressed in part and reshipped to interstate destinations, found unlawful to extent they exceeded charges that would have accrued on basis of refunds permitted by the tariff. *Chicago Lumber & Coal Co. v. M. L. & T. R. R. & S. S. Co.* 73 (74).

Operation of tariff rule may not properly be considered as restricted to shipments of lumber wholly planed, dressed, or resawed. *Id.* (74).

Suspended tariffs to be amended in such manner as not to subject Pacific coast apples to any transit charge in addition to present charge. *1915 Western Rate Advance Case—Part II*, 114 (162).

Charges on lumber from points in Texas, creosoted in transit at New Orleans, La., for export, found unreasonable and unjustly discriminatory. Creosoting in transit is now authorized by the tariff, and no order for future entered. *American Creosote Works v. M. L. & T. R. R. & S. S. Co.* 238 (239).

Cancellation of transit service at Manitowoc would result in unjust discrimination and is found not justified. *Grain from Manitowoc, Wis.*, 549 (553).

A transit privilege granted at one point on the Ohio River should also be accorded under substantially similar conditions at a competing point. *Paducah Board of Trade v. C., B. & Q. R. R. Co.* 743 (751).

Refusal of defendants to permit milling or handling of grain in transit at Paducah, under through rates from central freight association and western trunk line territories to points in Kentucky, southeastern territory, Mississippi Valley territory, and Tennessee, upon same terms as at Cairo, results in unjust discrimination. *Id.* (758-759).

TRANSPORTATION CONDITIONS.

From Bauxite to Joplin and Coffeyville not shown to be so unfavorable as compared with those to East St. Louis as to justify a higher rate for the shorter distance. *1915 Western Rate Advance Case—Part II*, 114 (145).

Circumstances surrounding transportation of coal from complainant's collieries in the Wyoming coal region of Pennsylvania and from those considered in *Meeker* and *Marian cases* are substantially similar. *Plymouth Coal Co. v. P. R. R. Co.* 457 (459).

Affecting movement of anthracite coal over lines of defendant and of the L. V. R. R. from Wyoming region to tidewater are substantially similar. *Red Ash Coal Co. v. C. R. R. Co. of N. J.*, 460 (461).

No material changes in, are shown that would warrant condemnation of the differential on crushed stone over sand and gravel previously prescribed. *Crushed Stone from Wisconsin Points*, 593 (595).

VALUE OF COMMODITY.

Value of carload of draft beer ranges from \$400 to \$500. That of bottled beer is about \$800. Official Classification Ratings, 166 (170).

Before the war price of ferromanganese ranged from \$35 to \$50 per ton. Now ranges from \$100 to \$120 per ton. Ferromanganese to Western Points, 374.

Burlap and burlap bags. New Orleans Joint Traffic Bureau v. A. & S. Ry. Co. 444 (446).

Difference between average values of dressed building marble and dressed building stone does not appear to be greater than difference between average values of polished building marble and polished building stone. Drake Marble & Tile Co. v. N. P. Ry. Co. 512 (515).

Value of farm wagons is about same as that of lumber wagons, but latter load more heavily. Brown-Roberts Hdwe. & Supply Co. v. A. & V. Ry Co. 671 (673).

VALUE OF SERVICE.

Commission can not accept view that value of service to parties using ferries justifies an increase in charges; for all rates subject to the act, no matter for what service performed, must be just and reasonable. New York-Jersey City Ferry Rates, 103 (113).

VOLUME OF TRAFFIC.

Freight service handles longer and heavier trains while conditions have not permitted same lengthening of passenger trains and increase in passengers carried per train. Western Passenger Fares, 1 (34).

Local passenger traffic of ferries is declining on account of increased use of the Hudson tubes. New York-Jersey City Ferry Rates 103 (110).

Less-than-carload movement of beer is large, although not so large as in carloads. Official Classification Ratings, 166 (171).

Flour moves continuously and in very large volume in official classification territory under existing rates. Id. (186).

Volume of lumber traffic from San Pedro to Arizona mining section is greater than from the lumber-producing section of Arizona to same points. McCormick & Co. v. S. P. Co. 234 (236).

Handled by steamship company between c. f. a. territory and Savannah is negligible. Ocean S. S. Co. of Savannah, 422 (425).

Movement of oil via rail line from loading ports to points in Oregon and Washington compared with movement via oil steamers. S. P. Co. Ownership of Oil Steamers, 525 (534).

Rates on grain and grain products from producing points in the west to Atlantic seaboard should be relatively lower because of the large volume of traffic. Grain from Manitowoc, Wis., 549 (551).

VOLUNTARY RATES.

The mere fact that respondents voluntarily established and have maintained commodity rates for a number of years would not justify their continuance in the face of a showing that they should be canceled and restored to the usual customary basis. Harness to Oklahoma, 726 (729).

VOLUNTARY REDUCTION.

When carriers have reduced rates of their own volition or in compliance with Commission's orders it does not necessarily follow that reparation should be awarded on shipments which moved under preexisting rates. Boardman Co. v. S. P. Co. 81 (86-87).

Voluntary reduction of refrigeration rate to meet carrier competition does not establish that previous rate was unreasonable. Wattam v. N. P. Ry. Co. 101 (102).

VOLUNTARY REDUCTION—Continued.

Rates on Blackstrap molasses to Omaha further voluntarily reduced shortly after case was submitted; but the voluntary reduction of a rate is not of itself sufficient evidence that prior rate was unreasonable. *Omaha Grain Exchange v. M. & O. R. R. Co.* 363, 364.

Rate on lumber from Beaudette, Minn., to Vincennes, Ind., voluntarily reduced to 26 cents. Former rate of 27 cents not found unreasonable. *Bradley Timber & Railway Supply Co. v. C. N. Ry. Co.* 583.

WAGES.

Portion of revenue paid in salaries and wages. *Western Passenger Fares*, 116.

Increased wages and salaries and labor costs per train-mile and per car-mile. *Id.* (9).

WAR IN EUROPE. See also CONTRABAND.

Affected price ferromanganese. *Ferromanganese to Western Points*, 374.

WAR WITH SPAIN.

Referred to. *Safety Appliances on Railroads in Porto Rico*, 470 (471).

WAREHOUSE.

River & Rail Storage Co. owns a warehouse and "incline" on river bank at Memphis. Facilities described. *Pine Bluff Traffic Bureau v. L. & N. R. R. Co.* 218 (222).

WASTE AND EXTRAVAGANCE. See PASSENGER TRAIN SERVICE.

WATER CARRIERS. See also BOAT LINES; THROUGH ROUTES AND JOINT FARES
Territories served by Merchants & Miners Transp. Co. and Ocean Steamship Co., defined. *Ocean S. S. Co. of Savannah*, 422 (428).

WATER COMPETITION. See COMPETITION (WATER).

WATER TRANSPORTATION.

Movement of oil by water is more dependable than by rail; delivery is made in a shorter time; shipments are made in larger volume, and time of arrival is more certain. *S. P. Co. Ownership of Oil Steamers*, 525 (535).

WEAK LINES.

Many roads are prosperous while others are now in the hands of receivers. *Western Passenger Fares*, 1 (11).

WEIGHT. See also ESTIMATED WEIGHT.

Weight per cubic foot of agricultural implements and articles of machinery and iron, compared. *1915 Western Rate Advance Case—Part II*, 114 (119).

Complaint alleging that charges on posts from Mile Post 318, near Remer, Minn., to Minnesota Transfer, Minn., destined to Galesburg, Ill., were excessive because based on a weight in excess of actual weight, dismissed for want of evidence. *Duluth Log Co. v. M., St. P. & S. S. M. Ry. Co.* 619.

WHARVES.

Ship-side terminals at Savannah. *Ocean S. S. Co. of Savannah*, 422 (427).

YARDAGE SERVICES.

Failure to make complainant an allowance for yardage services at Philadelphia on hog not found unjustly discriminatory. Complainant has never sought to use defendant's facilities but has chosen to provide its own. *Felin & Co., Inc., v. P. & R. Ry. Co.* 231 (233).



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